

**EXHIBIT BB TO  
CISNEROS DECLARATION  
REDACTED VERSION**

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4  
5

6 IN RE: HIGH-TECH EMPLOYEE )  
7 ANTITRUST LITIGATION )  
8 ) No. 11-CV-2509-LHK  
9 THIS DOCUMENT RELATES TO: )  
10 ALL ACTIONS. )  
11 \_\_\_\_\_ )  
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14 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
15 VIDEO DEPOSITION OF JONATHAN ROSENBERG  
16 March 13, 2013  
17  
18

19 REPORTED BY: GINA V. CARBONE, CSR NO. 8249, RPR, CCRR  
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10:09:53 1 working for Google?

10:09:54 2 A. Palm.

10:09:59 3 Q. And when did you work for Palm, approximately?

10:10:02 4 A. For approximately three months prior to the  
10:10:05 5 start of my employment at Google.

10:10:15 6 Q. And was your title vice president of software?

10:10:20 7 A. It was vice president of something, I don't  
10:10:22 8 recall whether or not it was specifically software.

10:10:25 9 Q. Okay.

10:10:30 10 THE VIDEOGRAPHER: Excuse me, Jonathan, could  
10:10:33 11 you scoot over toward the court reporter a little.

10:10:36 12 THE WITNESS: Sure.

10:10:37 13 THE VIDEOGRAPHER: Thank you.

10:10:38 14 MR. HARVEY: Q. Could you describe,  
10:10:39 15 generally, what your responsibilities were as a vice  
10:10:41 16 president at Palm.

10:10:47 17 A. I was in charge of the features and functions  
10:10:51 18 of the software and services that were integrated into  
10:10:56 19 the Palm Pilot. So it was a traditional product  
10:11:00 20 management position governing understanding of market  
10:11:05 21 competition features and functions.

10:11:12 22 Q. Did you have a relationship with Edward  
10:11:17 23 Colligan?

10:11:19 24 MR. RUBIN: Objection. Form.

10:11:21 25 MR. HARVEY: Q. Let me clarify. Actually,

10:11:25 1 give me a moment.

10:11:48 2 When you worked at Palm, did you have any  
10:11:50 3 overlap with Edward Colligan where the two of you both  
10:11:54 4 worked for Palm at the same time?

10:11:56 5 A. Possibly.

10:11:56 6 Q. But you are not sure sitting here today?

10:11:59 7 A. I'm not.

10:12:08 8 Q. Do you know Mr. Colligan personally?

10:12:10 9 A. I believe I have met him, but I couldn't pick  
10:12:12 10 him out of a crowd.

10:12:14 11 Q. Do you recall the last time you met him?

10:12:16 12 A. No.

10:12:17 13 Q. Okay. Do you recall the last time you  
10:12:19 14 communicated with him?

10:12:20 15 A. No.

10:12:29 16 Q. Okay. While you were at Palm, did you have any  
10:12:32 17 responsibilities regarding recruiting or -- I'm sorry --  
10:12:37 18 firmwide recruiting?

10:12:40 19 A. I did not.

10:12:42 20 Q. Did you have any responsibilities with respect  
10:12:43 21 to firmwide compensation design?

10:12:48 22 A. My responsibilities were similar to my answer  
10:12:50 23 that I gave you at Apple. I was responsible for the  
10:12:53 24 implementation.

10:12:54 25 Q. Okay. When did you begin to work for Google?

10:13:12 1 A. February of 2002.

10:13:20 2 Q. And what was your first position?

10:13:24 3 A. Running product management.

10:13:28 4 Q. And that's running product management for the  
10:13:30 5 entire company?

10:13:35 6 A. Correct.

10:13:40 7 Q. Approximately how long did you maintain that  
10:13:45 8 primary responsibility at Google?

10:13:48 9 A. Nine years and a few months.

10:14:03 10 Q. Did you have any other primary responsibilities  
10:14:05 11 in that role from when you started until -- well, let me  
10:14:16 12 be more specific about it. Can you place, say, by month  
10:14:22 13 or approximately when your responsibilities changed from  
10:14:25 14 running product management for Google to something else?

10:14:28 15 A. Approximately April of 2011.

10:14:42 16 Q. And what were your primary responsibilities  
10:14:44 17 beginning in April of 2011?

10:14:52 18 A. I became an advisor to the office of the CEO.

10:14:55 19 So I became an advisor to Larry, and my responsibilities  
10:14:59 20 were not particularly well defined.

10:15:02 21 Q. Is that the role you currently have?

10:15:13 22 A. Yes, it is.

10:15:14 23 Q. Okay. While you were running product

10:15:18 24 management at Google, I believe you said from February

10:15:23 25 2002 through April of 2011, could you describe generally

10:15:27 1 what your primary responsibilities and job duties were.

10:15:33 2 A. My role was a functional role. The company was  
10:15:37 3 organized functionally. So I ran the product  
10:15:40 4 organization which interacted primarily with the  
10:15:44 5 engineering organizations, marketing, sales, and  
10:15:48 6 business development organizations. For some period the  
10:15:53 7 traditional outbound marketing efforts -- product  
10:15:56 8 marketing efforts were also under my purview.

10:16:04 9 The role of product management was similar to  
10:16:06 10 the role of product management in many other technology  
10:16:09 11 firms in the country, understanding the landscape -- the  
10:16:12 12 competitive landscape, understanding the consumer and  
10:16:17 13 market needs, and producing products and delivering the  
10:16:22 14 features and functions that the market is interested in  
10:16:25 15 against a time line that's consistent with the  
10:16:28 16 management goals and strategy and plan for the company

10:16:34 17 Q. And any time during this period from February  
10:16:36 18 2002 through April of 2011, was one of your primary  
10:16:44 19 responsibilities firmwide recruiting?

10:16:53 20 A. I certainly participated in firmwide recruiting  
10:16:56 21 efforts. I was not the lead recruiter for the firm.

10:17:04 22 Q. And was that true throughout the period, or was  
10:17:06 23 it only true for a certain portion of that period?

10:17:15 24 A. Recruiting was always an important component of  
10:17:17 25 my role.

10:17:18 1 Q. And the same question for firmwide compensation  
10:17:23 2 design; was that ever an important part of your role or  
10:17:26 3 any part of your role?

10:17:32 4 A. As a functional vice president, my role was  
10:17:35 5 primarily to administer compensation policies. And as a  
10:17:39 6 member of Eric's senior management team, I provided  
10:17:45 7 input on compensation practices and policies from time  
10:17:48 8 to time as the issues came up.

10:17:55 9 Q. And did you have any other responsibilities  
10:17:57 10 concerning compensation apart from what you just  
10:17:59 11 described?

10:18:02 12 A. Not that I can specifically think of.

10:18:05 13 Q. Okay. And throughout this period, from  
10:18:26 14 February 2002 through April of 2011, the senior  
10:18:33 15 management who reported directly to, in the beginning  
10:18:39 16 Mr. Schmidt, that group was usually referred to as the  
10:18:42 17 executive management group; is that correct?

10:18:46 18 A. That was one term by which we were referred,  
10:18:49 19 yes.

10:18:51 20 Q. And let me see if I have this straight. I hope  
10:18:54 21 I do. Was it referred to as the executive management  
10:19:01 22 group until the term changed to the operating committee  
10:19:09 23 in 2009?

10:19:11 24 A. Yes. That sounds familiar.

10:19:14 25 Q. And then in 2011 when Larry Page took over from

10:19:19 1 Eric Schmidt, it was sometimes referred to as Larry's  
10:19:24 2 team; is that right?

10:19:25 3 A. That sounds right.

10:19:27 4 Q. Okay. And this group of individuals I'll refer  
10:19:37 5 to as the EMG typically met every week on Mondays,  
10:19:42 6 correct?

10:19:43 7 A. Traditionally we met on Mondays, yes.

10:19:47 8 Q. Did you typically attend those meetings?

10:19:48 9 A. Almost -- it was my highest priority to attend  
10:19:51 10 those meetings relative to anything else that I was  
10:19:54 11 doing. So generally, yes.

10:19:56 12 Q. So if you were -- if you were in the area  
10:20:00 13 geographically at the time, you made it a priority to  
10:20:04 14 attend those meetings every Monday?

10:20:17 15 A. Absolutely.

10:20:53 16 (Reporter interruption.)

10:21:01 17 MR. HARVEY: Q. When you switched to an  
10:21:07 18 advisor to Larry Page, I believe you said that the  
10:21:11 19 responsibilities weren't defined very well; is that  
10:21:13 20 correct?

10:21:14 21 A. Uh-huh.

10:21:15 22 Q. What did you typically do in that capacity as  
10:21:17 23 an advisor to Mr. Page?

10:21:21 24 A. Well, I started by taking a long vacation. I  
10:21:29 25 then returned and began to look for areas in the company

10:28:19 1 Mr. Campbell about his testimony?

10:28:20 2 MR. RUBIN: Objection. Form.

10:28:22 3 THE WITNESS: I did not.

10:28:23 4 MR. HARVEY: Q. I just have to run through

10:28:24 5 it quickly.

10:28:25 6 Did you speak with Ms. Brown about her

10:28:27 7 testimony?

10:28:27 8 A. I did not.

10:28:28 9 MR. RUBIN: Objection. Form.

10:28:29 10 THE WITNESS: All right.

10:28:30 11 MR. RUBIN: We could have a standing objection

10:28:31 12 if we're going to --

10:28:32 13 THE WITNESS: He's going to object in all, and

10:28:33 14 my answer is going to be "I did not." But I'm happy to

10:28:36 15 keep going.

10:28:37 16 MR. RUBIN: So objection. Form.

10:28:38 17 We can have a standing objection each name,

10:28:39 18 given the question --

10:28:40 19 MR. HARVEY: There are only two more.

10:28:41 20 MR. RUBIN: Okay.

10:28:42 21 MR. HARVEY: Q. Did you speak to

10:28:43 22 Mr. Eustace about his testimony?

10:28:45 23 MR. RUBIN: Objection. Form.

10:28:46 24 THE WITNESS: I did not.

10:28:47 25 MR. HARVEY: Q. Did you speak to

10:28:48 1 Mr. Kordestani about his testimony?

10:28:50 2 MR. RUBIN: Objection. Form.

10:28:51 3 THE WITNESS: I did not.

10:28:57 4 MR. HARVEY: Thank you.

10:29:10 5 Q. Do you recall appearing at an event in  
10:29:13 6 Half Moon Bay called the Think Tomorrow Today conference  
10:29:16 7 on June 6th, 2008?

10:29:21 8 A. I recall attending many events at that  
10:29:24 9 particular venue, and it was my custom to go to these  
10:29:28 10 events. I don't specifically recall the Think Tomorrow  
10:29:31 11 event.

10:29:34 12 Q. Do you recall, on that date at that event,  
10:29:40 13 being interviewed by Bill Campbell on stage in front of  
10:29:42 14 an audience?

10:29:45 15 A. I do recall being interviewed by Bill Campbell  
10:29:48 16 at an event.

10:29:53 17 Q. Okay. So this event happened to be videotaped,  
10:29:56 18 and it's on YouTube. So I have the video with me today,  
10:30:00 19 and I'm going to introduce a recording of the video as  
10:30:11 20 Plaintiffs' Exhibit 1750, I believe, so that will just  
10:30:12 21 be part of the record.

10:30:13 22 (Whereupon, Exhibit 1750 was marked for  
10:30:13 23 identification.)

10:30:14 24 MR. HARVEY: Q. I have the YouTube video  
10:30:15 25 on this laptop.

10:30:17 1 A. Okay.

10:30:18 2 Q. So I'm going to start it. And if you could,  
10:30:23 3 for however long you need, just until you can verify  
10:30:25 4 that this video is, in fact, a video of that event, and  
10:30:29 5 the individuals on stage are, in fact, you and  
10:30:32 6 Mr. Campbell.

10:30:35 7 A. Sure.

10:30:43 8 MR. HARVEY: Is there anything we need to do?

10:30:49 9 (Discussion off the record.)

10:30:51 10 THE WITNESS: I don't think it will be  
10:30:53 11 particularly difficult for me to verify that that's me  
10:30:56 12 and Mr. Campbell, so....

10:30:57 13 MR. HARVEY: Q. Can you do it without me  
10:30:57 14 even playing it?

10:30:58 15 A. Yes. That's me and Mr. Campbell.

10:31:01 16 Q. That makes it easier.

10:31:01 17 I'm going to play a couple of segments and then  
10:31:03 18 I'll ask you about them. The first one, let's see if I  
10:31:06 19 can do this, starts at 2 minutes and 40 seconds in. Let  
10:31:19 20 me try to get there.

10:31:22 21 A. Good chance I can get there faster than you.

10:31:24 22 Q. I have no doubt that's true.

10:31:31 23 All right. Here we go.

10:31:39 24 [video played]

10:31:40 25 "And I sort of felt bad because, you know, he

10:31:42 1 was obviously a smart guy and he had been  
10:31:43 2 thrown out. So I ran out, and Riley said,  
10:31:46 3 well, if you are advocating how Google is, why  
10:31:49 4 don't you come work for us. I sort of thought  
10:31:52 5 about it. I had this kind of nice cushy job as  
10:31:55 6 senior vice president of [inaudible] home. And  
10:31:57 7 I said, well, your search engine is really  
10:31:59 8 cool, but how are you going to make money. And  
10:32:02 9 Larry said to me, and it was the spring of  
10:32:06 10 1999, he said search is what" --

10:32:08 11 MR. HARVEY: Q. Okay. Did you first

10:32:18 12 consider working for Google as a result of the  
10:32:21 13 conversation you described here with Larry Page  
10:32:25 14 talking to you directly about the possibility?

10:32:28 15 A. I'm not sure I understand the question.

10:32:30 16 Q. Sure. Part of the video I played is you  
10:32:35 17 describing a conversation you had with Larry Page about  
10:32:42 18 working for Google, correct?

10:32:45 19 A. Yes.

10:32:45 20 Q. And I'll just ask the question directly. I'll  
10:32:48 21 disconnect it from the video.

10:32:53 22 Did you first consider working for Google when  
10:32:55 23 Larry Page asked you to consider that?

10:32:58 24 A. Hard to say.

10:33:03 25 Q. Did you -- well, how did it happen that you

10:33:08 1 moved from Palm to Google in that -- I'll be more  
10:33:12 2 specific -- more specific about it.

10:33:17 3 Did you apply or did someone from Google  
10:33:19 4 recruit you?

10:33:20 5 MR. RUBIN: Objection. Form.

10:33:21 6 THE WITNESS: I was recruited to Google long  
10:33:23 7 before I was at Palm. This discussion that I'm  
10:33:25 8 referencing took place two years prior.

10:33:31 9 MR. HARVEY: Q. Oh, I see. And was that  
10:33:34 10 conversation with Mr. Page the first conversation  
10:33:36 11 that occurred about the possibility of you working  
10:33:39 12 for Google?

10:33:40 13 A. It may have been, it may not. I don't recall  
10:33:42 14 the first conversation.

10:33:45 15 Q. Do you recall that the first conversation was  
10:33:47 16 initiated by someone at Google?

10:33:51 17 A. First conversation was initiated by a  
10:33:54 18 recruiter.

10:33:58 19 Q. And that was a recruiter at Google?

10:34:01 20 A. No.

10:34:03 21 Q. Who was the recruiter?

10:34:05 22 A. The recruiter was Stephen Combs.

10:34:08 23 Q. And who did Mr. Combs work for?

10:34:11 24 A. I believe he worked for a company called  
10:34:13 25 Juntunen and Combs. His partner was somebody Juntunen.

10:34:17 1 But by that point he might have been working for a  
10:34:19 2 company called the Bridgegate Group.

10:34:22 3 Q. Was this company a company that specialized in  
10:34:25 4 recruiting?

10:34:26 5 A. Yes.

10:34:27 6 Q. Did Google retain that company to recruit you?

10:34:29 7 A. I believe they did.

10:34:30 8 Q. Okay. Did you submit an application to Google  
10:34:37 9 in advance of being contacted by Mr. Combs?

10:34:44 10 A. I did not.

10:34:45 11 Q. Okay. And who did you -- I'm sorry. Strike  
10:34:51 12 that.

10:34:52 13 What company did you work for at the time that  
10:34:54 14 you were contacted by Mr. Combs?

10:34:58 15 A. The @Home Network.

10:35:00 16 (Reporter clarification.)

10:35:01 17 THE WITNESS: The @Home Network. At sign,  
10:35:04 18 H-O-M-E, capital N, Network.

10:35:09 19 MR. HARVEY: Q. Okay. I'm going to play  
10:35:11 20 one other segment from this, which I believe starts  
10:35:16 21 at approximately 19 minutes and 25 seconds in.

10:35:36 22 I'm going to play about two minutes of video  
10:35:38 23 and then I'll ask you a couple of questions about your  
10:35:39 24 statements.

10:35:43 25 [video played]

10:35:43 1 "...who wants to be an engineering trainer.

10:35:51 2 So take one click deeper and talk about the

10:35:52 3 recruiting process.

10:35:54 4 What I first experienced with the recruiting

10:35:54 5 process -- it was cute. I showed up my first

10:35:55 6 day and there were six people in my group;

10:35:58 7 Susan, Sala (phonetic) and Marissa, who you

10:36:01 8 probably see a lot of press about were there.

10:36:03 9 And they were doing recruiting. So I was,

10:36:05 10 like, you're all sitting there with your

10:36:08 11 laptops open. What the hell are you doing?

10:36:09 12 The answer is, we're looking for good people.

10:36:11 13 I'm, like, where? They're, like, we're using

10:36:14 14 Google. I said, well, don't you have

10:36:16 15 recruiters to do that? Don't lots of people

10:36:18 16 want to work here? Aren't they all applying?

10:36:20 17 And they said, no, we don't want the people who

10:36:24 18 are applying. We want the best people in the

10:36:26 19 world. I said, well, how do you find them?

10:36:28 20 They said, well, we're looking for generalists,

10:36:30 21 and we all just got out of college. So we know

10:36:34 22 the awards at all of our colleges. At Stanford

10:36:37 23 there is like a Boothe prize for writing. If

10:36:38 24 you need a marketing person, get the person

10:36:40 25 with the Boothe prize. So they're literally

10:36:44 1 running searches. And they all know their  
10:36:49 2 colleges well. They all went to big schools.  
10:36:51 3 I went to, like, little, rinky-dink Claremont  
10:36:53 4 McKenna College in Southern California. There  
10:36:54 5 is, like, 200 graduates a year. So I type in  
10:36:58 6 suma cum laude Claremont McKenna College, and I  
10:36:58 7 find two people and, you know, I try to  
10:37:00 8 convince them to join Google. And then I  
10:37:03 9 realize I'm not adding any value. Every week  
10:37:05 10 I'm showing up in this room, and they're  
10:37:08 11 running searches, finding great people, and  
10:37:10 12 giving the great people to the recruiters and  
10:37:11 13 saying, just send these -- just tell these  
10:37:13 14 people there is a plane ticket to Mountain View  
10:37:15 15 and we want to hire them. So I decided that I  
10:37:20 16 needed to add some value because I was busy  
10:37:22 17 arguing with Larry about the product lines. He  
10:37:25 18 didn't think I was a useful executive. So I  
10:37:29 19 thought, well, I'll try a different search. So  
10:37:32 20 I discovered there was an award at India  
10:37:32 21 Institute of Technology called the Gold Medal  
10:37:32 22 Award. And I ran a search and I found four  
10:37:32 23 people, Prashan, Sihndar, Deep, (phonetic) who  
10:37:32 24 won the Gold Medal Award at India Institute of  
10:37:32 25 Technology. And I said to the recruiter, call

10:37:32 1 these people and explain to them why they  
10:37:32 2 should work at Google. And if they don't agree  
10:37:53 3 with you, let me explain it to them. And so --  
10:37:56 4 and it worked. Like, suddenly we hired a few  
10:37:59 5 people. And so the recruiting dynamic is  
10:38:04 6 different. It's not the adverse selection of  
10:38:06 7 the people that want you, it's the people that  
10:38:07 8 you want. The next thing, which is really  
10:38:10 9 different" --

10:38:13 10 MR. RUBIN: And I'll just object to form.

10:38:14 11 Rule 106.

10:38:17 12 MR. HARVEY: Q. Okay. There are a couple  
10:38:22 13 of statements you made in that segment. And I'm  
10:38:24 14 just going to repeat them to you because it's  
10:38:26 15 easier, given the technology, for me just to say it,  
10:38:30 16 and then I'll ask you to explain kind of what you  
10:38:32 17 meant by that statement.

10:38:33 18 A. Okay.

10:38:34 19 Q. The first is, we don't want the people who are  
10:38:38 20 applying, we want the best people in the world.

10:38:42 21 MR. RUBIN: Objection. Form.

10:38:43 22 MR. HARVEY: Q. What did you mean by that  
10:38:45 23 statement?

10:38:46 24 MR. RUBIN: Sorry. I thought you were done,  
10:38:47 25 Dean, I'm sorry.

10:38:49 1 Objection. Form.

10:38:55 2 THE WITNESS: I'm not sure how to provide  
10:38:58 3 additional clarification beyond what I said.

10:39:03 4 MR. HARVEY: Q. Okay. The second  
10:39:07 5 statement that I want to ask you about is, it's not  
10:39:10 6 the adverse selection of the people that want you,  
10:39:14 7 it's the people that you want. Could you explain  
10:39:17 8 what you meant by that statement.

10:39:19 9 MR. RUBIN: Objection. Form.

10:39:32 10 THE WITNESS: Repeat the statement.

10:39:34 11 MR. HARVEY: Q. Sure. It's not the  
10:39:35 12 adverse selection of the people that want you, it's  
10:39:39 13 the people that you want.

10:39:42 14 MR. RUBIN: Objection. Form.

10:39:45 15 THE WITNESS: I guess you would have to be more  
10:39:46 16 specific about what portion of that statement you want  
10:39:48 17 me to clarify.

10:39:50 18 MR. HARVEY: Q. Sure. Why don't we break  
10:39:51 19 it up. When you used the phrase "adverse selection"  
10:39:55 20 in the context of individuals applying to Google,  
10:39:59 21 what did you mean by that?

10:40:08 22 A. That there is a bias related to the set of  
10:40:13 23 people who apply as opposed to those who don't.

10:40:17 24 Q. And what is that bias?

10:40:18 25 A. That the people who apply, on average, aren't

10:40:21 1 as good.

10:40:24 2 Q. And Google wanted to hire the best people it  
10:40:27 3 could?

10:40:28 4 MR. RUBIN: Objection. Form.

10:40:30 5 MR. HARVEY: Q. Correct?

10:40:31 6 A. As a general rule, Google always wanted to hire  
10:40:39 7 the best people it could.

10:40:45 8 Q. Okay. I think that's it for the video portion  
10:40:47 9 of the deposition.

10:40:56 10 MR. RUBIN: At a break, Dean, can we get a  
10:40:57 11 copy? Do you have another --

10:41:00 12 MR. HARVEY: I can give it to you right now.

10:41:02 13 MR. RUBIN: Great. Thank you.

10:41:45 14 MR. HARVEY: Q. In your experience at  
10:41:46 15 Google, would you say that the typical employee knew  
10:41:51 16 what comparable employees were being paid at Google?

10:41:54 17 MR. RUBIN: Objection. Form.

10:41:57 18 THE WITNESS: I don't know.

10:41:59 19 MR. HARVEY: Q. You don't have an opinion  
10:42:00 20 one way or another?

10:42:02 21 A. I don't.

10:42:02 22 MR. RUBIN: Objection. Form.

10:42:10 23 MR. HARVEY: Q. Did you think it was  
10:42:11 24 important not to share compensation ranges,  
10:42:19 25 compensation information about employees generally

10:42:20 1 with the wider population at Google?

10:42:23 2 MR. RUBIN: Objection. Form.

10:42:28 3 THE WITNESS: I guess you have to -- can you --  
10:42:30 4 I don't understand exactly what you are asking.

10:42:32 5 MR. HARVEY: Q. Sure. So let me take a  
10:42:34 6 step back for a moment.

10:42:36 7 You had information about what various  
10:42:39 8 engineers who worked for you were getting paid, correct?

10:42:43 9 A. I did.

10:42:44 10 Q. And that information was superior, in many  
10:42:47 11 ways, to the information that the engineers themselves  
10:42:51 12 had about what their colleagues were getting paid,  
10:42:54 13 correct?

10:42:54 14 MR. RUBIN: Objection. Form.

10:43:01 15 THE WITNESS: I had information that other  
10:43:02 16 people did not.

10:43:03 17 MR. HARVEY: Q. Was it important to you to  
10:43:05 18 keep that information from the wider population at  
10:43:10 19 Google.

10:43:11 20 MR. RUBIN: Objection. Form.

10:43:16 21 THE WITNESS: As a general rule, salary  
10:43:18 22 information is something which is kept confidential, and  
10:43:22 23 I -- I generally administered that policy.

10:43:28 24 MR. HARVEY: Q. Do you agree with that  
10:43:29 25 policy?

11:30:29 1 a chance to read through her email?

11:30:33 2 A. I have.

11:30:37 3 Q. And there is a rule No. 2 there starting on  
11:30:40 4 page 2, where she says that, "If there is a list of  
11:30:48 5 strategic partners with whom we will compete for talent,  
11:30:50 6 but we want to be as transparent about it as possible,  
11:30:54 7 then we make a different rule, which says: We will  
11:30:57 8 engage in interviews with these individuals. But we  
11:31:00 9 will inform them ONCE they have a formal offer from  
11:31:03 10 Google, that their employer needs to be given an  
11:31:07 11 opportunity to counter."

11:31:11 12 Do you recall considering this rule at the time  
11:31:15 13 in response to Mr. Shader's request?

11:31:20 14 A. I do not.

11:31:25 15 Q. Do you recall why, in rule No. 2 as Ms. Brown  
11:31:32 16 describes it, Google would inform the current employer  
11:31:36 17 only after Google had extended a formal offer to the  
11:31:41 18 candidate?

11:31:42 19 MR. RUBIN: Objection. Form.

11:31:52 20 THE WITNESS: I don't.

11:31:54 21 MR. HARVEY: Q. Sitting here today, apart  
11:31:55 22 from this document, do you have any views on why  
11:32:00 23 that might be the right thing to do?

11:32:02 24 MR. RUBIN: Objection. Form.

11:32:08 25 THE WITNESS: I'm sure I could come up with a

11:32:09 1 number of reasons. One primary reason would be the  
11:32:11 2 confidentiality of the candidate.

11:32:14 3 MR. HARVEY: Q. And could you elaborate on  
11:32:15 4 that a little bit. What confidentiality concern are  
11:32:19 5 you describing?

11:32:21 6 A. A candidate might not want his employer to know  
11:32:24 7 that he's interviewing with another firm.

11:32:26 8 Q. And why might a candidate not want his or her  
11:32:31 9 employer to know that he's interviewing with another  
11:32:33 10 firm, or she's interviewing with another firm?

11:32:37 11 A. I'm sure there are a whole host of relatively  
11:32:40 12 obvious reasons that any reasonable person can think of.

11:32:43 13 Q. And what would those obvious reasons be?

11:32:47 14 MR. RUBIN: Objection. Form.

11:32:57 15 THE WITNESS: Can you be specific and give me  
11:32:59 16 some possibilities? I can tell you whether I agree or  
11:33:01 17 disagree with them rather than just guessing.

11:33:03 18 MR. HARVEY: I don't want you to guess, but you  
11:33:04 19 just said that there were some obvious reasons. And so  
11:33:07 20 I'd like to have you list what those obvious reasons  
11:33:11 21 are.

11:33:12 22 MR. RUBIN: Objection. Form.

11:33:15 23 THE WITNESS: One would be that they could be  
11:33:16 24 perceived as disloyal.

11:33:21 25 MR. HARVEY: Q. Are there any others?

11:33:24 1 A. Again, I can't make an exhaustive list for you.  
11:33:28 2 I think as a general rule, it's obvious why employees  
11:33:31 3 who are looking might not want their employers to know  
11:33:34 4 that they're looking.

11:33:41 5 Q. Okay. Why don't we stick with the first reason  
11:33:45 6 you gave, that the employer may be concerned that -- I'm  
11:33:49 7 sorry -- that the employee may be concerned that his or  
11:33:52 8 her employer would perceive that person as disloyal.

11:34:02 9 In that circumstance, where an employer  
11:34:05 10 discovers that an employee is interviewing at another  
11:34:09 11 company, why would that employer perceive that as a  
11:34:16 12 disloyal act?

11:34:18 13 MR. RUBIN: Objection. Form.

11:34:23 14 THE WITNESS: Again, there's lots of reasons.  
11:34:27 15 I don't -- I guess I don't understand exactly what you  
11:34:29 16 are asking.

11:34:31 17 MR. HARVEY: Q. Well, I'm basically asking  
11:34:33 18 you to expand on the point you've already made,  
11:34:36 19 which is that an obvious reason why an employee may  
11:34:39 20 not want to know -- or may not want their employer  
11:34:43 21 to know that they're interviewing is that they could  
11:34:46 22 be perceived as disloyal. So I'm asking why is  
11:34:49 23 that? Why is that an obvious concern?

11:34:56 24 MR. RUBIN: Objection. Form.

11:35:00 25 THE WITNESS: Because employees have

11:35:02 1 confidential information, and firms compete with each  
11:35:06 2 other and often don't want confidential information  
11:35:10 3 going from one company to another through an employee.

11:35:17 4 MR. HARVEY: Q. What about the disloyalty  
11:35:20 5 piece? What would be disloyal about interviewing  
11:35:23 6 with other companies?

11:35:25 7 MR. RUBIN: Objection. Form.

11:35:27 8 THE WITNESS: You would have to ask the manager  
11:35:28 9 of the employee what their view of disloyalty is, but  
11:35:33 10 I'm sure that many employees perceive that their  
11:35:35 11 managers might think it disloyal, and it therefore not  
11:35:38 12 to be in their self-interest to have their managers be  
11:35:41 13 aware of the fact that they're looking for other  
11:35:43 14 employment.

11:35:46 15 MR. HARVEY: Q. And it's fair to say that  
11:35:49 16 when an employer learns that an employee is looking  
11:35:54 17 around to work for another employer, that this  
11:35:59 18 disloyalty concern could result in negative  
11:36:04 19 consequences to the career of that employee should  
11:36:07 20 that employee choose to stay at the current  
11:36:09 21 employer?

11:36:09 22 MR. RUBIN: Objection. Form.

11:36:12 23 THE WITNESS: It's a pretty complex statement.  
11:36:15 24 I'm not sure I can speculate on the generality as to  
11:36:21 25 whether or not it's true for different people in

11:36:22 1 different positions.

11:36:26 2 MR. HARVEY: Q. And I'm not asking you to  
11:36:29 3 be specific about a particular person or to get into  
11:36:32 4 anyone else's mind.

11:36:34 5 I guess what I'm asking is for you to rely on  
11:36:37 6 your own knowledge, your own experience in the industry,  
11:36:40 7 your own experience managing people for many years,  
11:36:42 8 managing large groups of people. Do you have an  
11:36:47 9 understanding of the phenomenon that you earlier  
11:36:49 10 described as an obvious one that an employer may view an  
11:36:55 11 employee looking around for jobs elsewhere as an act of  
11:37:01 12 disloyalty?

11:37:02 13 MR. RUBIN: Objection. Form.

11:37:06 14 THE WITNESS: I believe some people would view  
11:37:08 15 that news negatively, yes.

11:37:12 16 MR. HARVEY: Q. Would you have viewed that  
11:37:14 17 news negatively if one of your employees were  
11:37:16 18 shopping around for offers from other companies?

11:37:22 19 A. It would very much depend on the employee and  
11:37:24 20 the specific situation. In some cases yes, and in some  
11:37:27 21 cases, no.

11:37:35 22 Q. Okay. Back to the document. If we could go to  
11:37:47 23 your email in response to Ms. Brown's email on the first  
11:37:52 24 page. It looks like you added Eric Schmidt to the  
11:38:02 25 conversation; is that correct?

11:38:06 1 A. If this is the full thread and there's no other  
11:38:09 2 pieces in between, then that statement is correct.

11:38:13 3 Q. Okay. And you begin your email by saying, "The  
11:38:18 4 only company I know that we ever had a non-poaching  
11:38:22 5 policy with was Yahoo and we dropped that policy  
11:38:27 6 recently."

11:38:27 7 Sitting here today, do you recall that  
11:38:30 8 non-poaching policy with respect to Yahoo?

11:38:33 9 A. I do not.

11:38:33 10 Q. You don't recall anything about it?

11:38:34 11 A. I do not.

11:38:35 12 Q. You don't recall whether the policy existed or  
11:38:38 13 not?

11:38:40 14 A. I do not.

11:38:40 15 MR. RUBIN: Objection. Form.

11:38:50 16 MR. HARVEY: Q. The next sentence says, "I  
11:38:51 17 agree that the way to handle this is for you to  
11:38:54 18 formalize a policy but I think rule No. 2 is more  
11:38:58 19 appropriate for us."

11:39:04 20 Do you recall why you thought the way to handle  
11:39:06 21 the situation was for Ms. Brown to formalize a policy?

11:39:10 22 A. I do not.

11:39:12 23 Q. Do you recall why you thought rule No. 2 was  
11:39:15 24 more appropriate for Google?

11:39:19 25 A. I recall that in general, I preferred rules

11:39:24 1 that restricted us less than rules that restricted us  
11:39:27 2 more.

11:39:29 3 Q. And when you say restricted us, you mean  
11:39:31 4 Google's ability to recruit from wherever it wanted,  
11:39:36 5 correct?

11:39:38 6 A. I --

11:39:39 7 Q. I'm sorry. Let me just interrupt you. I  
11:39:41 8 apologize. It was a very poorly phrased question. Let  
11:39:44 9 me ask a better one -- or try to ask a better one.

11:39:48 10 When you used the word "restricted," you were  
11:39:52 11 referring to limitations on Google's ability to recruit,  
11:39:55 12 correct?

11:39:56 13 MR. RUBIN: Objection. Form.

11:40:04 14 THE WITNESS: Again, I'm simply referring to  
11:40:07 15 any degree to which -- any degree to which, as a  
11:40:15 16 manager, I have fewer options as opposed to more  
11:40:18 17 options. More options is always better.

11:40:29 18 MR. HARVEY: Q. And so the kinds of  
11:40:31 19 restrictions that are being discussed here, such as  
11:40:34 20 what you refer to as a no-poaching policy,  
11:40:39 21 restrictions of those kind would have limited your  
11:40:42 22 options, correct?

11:40:51 23 A. It would depend on what was agreed to with  
11:40:53 24 respect to such a policy. In theory, such -- in  
11:40:56 25 theory -- in theory, some policies could limit your

11:41:03 1 options relative to other policies if you adhered to  
11:41:09 2 them.

11:41:09 3 Q. So suppose, in this email string, you had  
11:41:11 4 responded to Mr. Shader's request by saying something  
11:41:15 5 like, great idea. Let's agree that our recruiting teams  
11:41:17 6 will not target each other's employees, say.

11:41:22 7 That -- that policy, that agreement, would have  
11:41:27 8 limited Google's options in terms of its ability to  
11:41:31 9 recruit employees, correct?

11:41:33 10 MR. RUBIN: Objection. Form.

11:41:36 11 THE WITNESS: I'm not aware of any such  
11:41:38 12 agreement, so I'm not sure how to answer your question.

11:41:43 13 MR. HARVEY: Q. All right. We'll get to  
11:41:44 14 this later.

11:41:59 15 If we go to the top of the document,  
11:42:03 16 Mr. Schmidt chimes in and says, "From a purely selfish  
11:42:08 17 Google position our policy should be to have 'no rule'."  
11:42:15 18 Do you see that?

11:42:16 19 A. I do.

11:42:18 20 Q. Do you have an understanding of why -- well,  
11:42:23 21 first of all, do you agree with that statement?

11:42:27 22 MR. RUBIN: Objection. Form.

11:42:33 23 THE WITNESS: As a manager, I generally  
11:42:36 24 preferred fewer rules to less.

11:42:38 25 MR. HARVEY: Q. And why is that?

11:42:39 1 A. For the reason I gave before. More options is  
11:42:42 2 preferred to fewer.

11:42:44 3 Q. And why did you have that preference in the  
11:42:51 4 context of recruiting employees?

11:42:58 5 A. Because a large portion of my job focused on  
11:43:00 6 recruiting people, and I wanted to maximize the success  
11:43:05 7 of my recruiting efforts.

11:43:16 8 Q. And how would rules of the kind contemplated in  
11:43:19 9 this document have potentially limited the success of  
11:43:26 10 your recruiting efforts?

11:43:29 11 MR. RUBIN: Objection. Form.

11:43:30 12 THE WITNESS: You have to give me a specific  
11:43:32 13 example.

11:43:35 14 MR. HARVEY: Q. Well, why don't we go with  
11:43:36 15 the example of Mr. Shader's request, which he says,  
11:43:40 16 "I would appreciate it if you could ask your  
11:43:43 17 recruiting teams not to target Good employees."

11:43:46 18 Suppose Google agreed with that request. How  
11:43:50 19 would that rule limit your ability to be successful in  
11:43:56 20 the context of recruiting?

11:43:59 21 MR. RUBIN: Objection. Form.

11:44:01 22 THE WITNESS: It doesn't say that Google agreed  
11:44:02 23 to that.

11:44:03 24 MR. HARVEY: Q. Right. And I'm not trying  
11:44:04 25 to get you to say that Google did, because that's

11:44:07 1 not my point. My point is just to try to understand  
11:44:10 2 how, you know -- at this time it appears that Google  
11:44:14 3 is considering different options. And what I'm  
11:44:20 4 trying to understand is what the potential  
11:44:24 5 consequences would be of the possibilities being  
11:44:26 6 considered.

11:44:27 7 And one possibility, presumably, is what  
11:44:30 8 Mr. Shader requests in the email that starts this  
11:44:32 9 conversation, which is, that Google would agree not to  
11:44:36 10 recruit Good employees.

11:44:37 11 So my question is, what would be the  
11:44:38 12 consequence of that if -- and I understand that you are  
11:44:42 13 not saying that Google did -- but if Google agreed to  
11:44:46 14 Mr. Shader's request?

11:44:47 15 MR. RUBIN: Objection. Form.

11:44:53 16 THE WITNESS: If the company agreed not to hire  
11:44:55 17 an individual and then chose to adhere to that, then  
11:44:59 18 they couldn't hire the individual.

11:45:02 19 MR. HARVEY: Q. Okay. And a limit on your  
11:45:04 20 ability to hire individuals would potentially limit  
11:45:09 21 your ability to be successful in your efforts to  
11:45:13 22 recruit the best candidates for Google, correct?

11:45:16 23 MR. RUBIN: Objection. Form.

11:45:24 24 THE WITNESS: I think I've answered that  
11:45:25 25 question.

11:52:13 1 understand this in the same way?

11:52:16 2 MR. RUBIN: Objection. Form.

11:52:17 3 THE WITNESS: You'd have to ask Dr. Schmidt.

11:52:23 4 MR. HARVEY: Q. Well, you are on this  
11:52:24 5 email, and I take it you don't remember, but you may  
11:52:27 6 have had conversations with him on this topic at the  
11:52:30 7 time or throughout the years, and you certainly know  
11:52:35 8 Mr. Schmidt much better than I do. When you  
11:52:39 9 received this document, did you have an  
11:52:40 10 understanding of what he meant here?

11:52:44 11 MR. RUBIN: Objection. Form.

11:52:53 12 THE WITNESS: I think I added him to the thread  
11:52:55 13 because I think he agreed with me. That we wanted to  
11:52:58 14 have as few rules as possible. And insofar as we wanted  
11:53:05 15 to be sensitive, there were companies that we did  
11:53:09 16 business with, like Good Technologies which we were  
11:53:13 17 working on a number of things with. And when we wanted  
11:53:16 18 to maintain good relations, it was a good idea to be  
11:53:19 19 sensitive or careful, unless for some reason there were  
11:53:23 20 some reasons not to. And I don't know what he's  
11:53:29 21 suggesting those reasons might or might not be.

11:53:43 22 MR. HARVEY: Q. Do you recall whether you  
11:53:45 23 discussed with him at the time, or whether it was  
11:53:47 24 part of this conversation, that if Google were to  
11:53:52 25 restrict its recruiting activities, that that

11:53:55 1 restriction would only make sense if the restriction  
11:53:58 2 were mutual with the other company?

11:54:01 3 A. I do not.

11:54:03 4 Q. Okay. Do you recall whether the issue of the  
11:54:07 5 restriction being contractually mandated came up apart  
11:54:11 6 from this email?

11:54:12 7 A. No, I do not.

11:54:14 8 Q. Okay. Oh, one other question on this document  
11:54:24 9 before we move on. Something I skipped over. If you go  
11:54:27 10 back to the second email on this page that you wrote.

11:54:33 11 A. Uh-huh.

11:54:33 12 Q. And if you look to the second paragraph, and  
11:54:35 13 the end of that paragraph, the last sentence, where you  
11:54:38 14 said, "I do agree with your caveat that we never get  
11:54:42 15 into bidding wars as a result of Rule number 2."

11:54:47 16 What did you mean by "bidding wars"?

11:54:54 17 A. It's not clear.

11:55:00 18 Q. Do you have an understanding, sitting here  
11:55:02 19 today, of what the term bidding wars means in the  
11:55:05 20 context of recruiting and hiring?

11:55:07 21 MR. RUBIN: Objection. Form.

11:55:18 22 THE WITNESS: In this context, my best guess  
11:55:20 23 would be that it means a dynamic of iterative multiple  
11:55:25 24 counteroffers.

11:55:26 25 MR. HARVEY: Q. And that's undesirable

11:55:28 1 because at the end of that process, the eventual  
11:55:31 2 compensation could be quite high, correct?

11:55:33 3 MR. RUBIN: Objection. Form.

11:55:35 4 THE WITNESS: There are a number of reasons why  
11:55:36 5 it could be undesirable.

11:55:40 6 MR. HARVEY: Q. Is an increase in the  
11:55:45 7 eventual compensation one of the reasons?

11:55:47 8 MR. RUBIN: Objection. Form.

11:55:48 9 THE WITNESS: It could be.

11:55:53 10 MR. HARVEY: Q. Sitting here today, do you  
11:55:54 11 have a view on whether it is, in fact, a reason?

11:55:57 12 MR. RUBIN: Objection. Form.

11:55:59 13 THE WITNESS: I cannot say specifically what  
11:56:01 14 motivated me to write that sentence.

11:56:07 15 MR. HARVEY: Q. And what I'm asking about  
11:56:09 16 now -- you can kind of put the document aside. Just  
11:56:13 17 sitting here today, and given your understanding of  
11:56:18 18 bidding wars in the context of recruiting and  
11:56:21 19 hiring --

11:56:22 20 A. Uh-huh.

11:56:22 21 Q. -- is one of the reasons why bidding wars are  
11:56:26 22 undesirable is that the compensation for the individual  
11:56:31 23 in question may be higher than you would otherwise want  
11:56:35 24 it to be?

11:56:36 25 MR. RUBIN: Objection. Form.

11:56:46 1 THE WITNESS: I guess you have to break the  
11:56:47 2 question down and help me understand what you are  
11:56:48 3 asking.

11:56:49 4 MR. HARVEY: Q. Sure. Do you have a view  
11:56:51 5 on whether -- all right. Let me back up a moment.

11:57:00 6 If you were trying to buy a product or  
11:57:02 7 services, generally you want to pay less rather than  
11:57:04 8 more for that product or service, correct?

11:57:06 9 MR. RUBIN: Objection. Form.

11:57:10 10 THE WITNESS: Generally in economics, cheaper  
11:57:12 11 is preferred to more expensive, yes.

11:57:16 12 MR. HARVEY: Q. And in your role at  
11:57:18 13 Google, you spent a lot of time thinking about --  
11:57:20 14 it's not usually termed this way, but I think in  
11:57:25 15 reality it's what it is -- purchasing labor by  
11:57:30 16 hiring employees and then paying those employees to  
11:57:32 17 do things for Google, correct?

11:57:34 18 A. I spent most of my time focused on hiring the  
11:57:41 19 best talent possible and not thinking a great deal about  
11:57:44 20 the state of the labor market or compensation practices.

11:57:50 21 Q. Yeah. And I'm glad you said that, because I'm  
11:57:52 22 not asking about the wider labor market or anything.  
11:57:55 23 I'm just asking about you and what you were doing at  
11:57:58 24 Google.

11:58:02 25 Part of making sure that the best people in the

11:58:05 1 world would come to work for Google was negotiating what  
11:58:08 2 their compensation would be when they -- when they  
11:58:11 3 worked at Google, correct?

11:58:12 4 MR. RUBIN: Objection. Form.

11:58:20 5 THE WITNESS: Restate the question again.

11:58:23 6 MR. HARVEY: Q. When you recruited and  
11:58:26 7 hired people to work for Google, their compensation  
11:58:30 8 at Google was a topic that came up during those  
11:58:33 9 conversations, correct?

11:58:34 10 A. Yes.

11:58:35 11 Q. And of course the employees who had come worked  
11:58:39 12 for Google cared about what their compensation would be  
11:58:41 13 generally, correct?

11:58:43 14 MR. RUBIN: Objection. Form.

11:58:44 15 THE WITNESS: I believe people care about  
11:58:46 16 compensation.

11:58:48 17 MR. HARVEY: Q. Okay. And so have there  
11:58:56 18 ever been examples that you know of where Google  
11:59:01 19 tried to hire someone and Google found itself in a  
11:59:04 20 bidding war for that person with another company?

11:59:10 21 A. Yes.

11:59:14 22 Q. You would have preferred that the other  
11:59:16 23 company, in those examples, or in that example, had no  
11:59:18 24 interest in the employee, correct?

11:59:20 25 MR. RUBIN: Objection. Form.

11:59:23 1 THE WITNESS: I would always prefer a path to  
11:59:25 2 hiring an employee that had fewer obstacles to more.

12:00:02 3 MR. HARVEY: Q. If you could please look  
12:00:04 4 at what's been previously marked as Exhibit 175.

12:00:53 5 A. Okay. I've read the document.

12:00:55 6 Q. And so this is a different string that starts  
12:00:58 7 with the same email.

12:01:02 8 If you could look to the top of page 2, there,  
12:01:05 9 it looks like Mr. Shader follows up on his email of  
12:01:10 10 November 4th and responds to the group, adding a couple  
12:01:16 11 others, on November 15th, 2003. Do you see that?

12:01:21 12 A. Yes.

12:01:26 13 Q. And then in Ms. Brown's response on the first  
12:01:29 14 page she says (as read), "Sorry for the delay. I think  
12:01:32 15 that the reality is employees of Google or Good need to  
12:01:36 16 be regarded as free agents, so I'm not comfortable  
12:01:41 17 prohibiting the recruitment of a Good employee to Google  
12:01:44 18 (or vis versa). In addition, I'm not comfortable  
12:01:51 19 betraying individual's privacy by revealing to Good when  
12:01:53 20 we are in discussions with them (obviously if a  
12:01:57 21 candidate does not ultimately get an offer, and yet it  
12:02:00 22 is known they were shopping, the candidates will  
12:02:03 23 perceive that negatively)."

12:02:05 24 Do you see that?

12:02:05 25 A. I do.

12:02:06 1 Q. Do you recall whether Google had an internal  
12:02:12 2 conversation about this topic that led with the outcome  
12:02:16 3 of Ms. Brown responding in this way?

12:02:22 4 A. I believe we did.

12:02:24 5 Q. And could you describe those conversations,  
12:02:25 6 please.

12:02:27 7 A. Not with any greater accuracy than Shona is  
12:02:31 8 codifying them in this email.

12:02:34 9 Q. So Shona's description is an accurate  
12:02:37 10 representation of the internal decision Google made in  
12:02:41 11 how to respond to Mr. Shader?

12:02:43 12 A. That, I don't know.

12:02:44 13 Q. Do you not know because you can't remember?

12:02:51 14 A. Yes.

12:03:06 15 MR. HARVEY: Okay. I'm done with that.

12:03:13 16 So this is something I forgot to mention to  
12:03:14 17 you. This is a document that was introduced on Monday,  
12:03:17 18 but we don't have the stamped copies yet, so I'm just  
12:03:20 19 going to describe it. Do you want to mark it anyway?

12:03:36 20 (Discussion off the record.)

12:03:47 21 MR. HARVEY: Why don't we go off the record for  
12:03:48 22 a moment.

12:03:49 23 THE VIDEOGRAPHER: We are now off the record at  
12:03:51 24 12:03.

12:04:12 25 (Recess taken.)

12:04:26 1 THE VIDEOGRAPHER: We are now on the record at  
12:04:28 2 12:04.

12:04:30 3 MR. HARVEY: Q. Mr. Rosenberg, if you  
12:04:30 4 could please take a look at a document that has been  
12:04:33 5 previously introduced as Exhibit 1738.

12:04:53 6 A. Okay.

12:04:56 7 Q. Here Mr. Shader responds to Ms. Brown's  
12:04:58 8 rejection by e-mailing you and Mr. Kordestani  
12:05:03 9 separately, correct?

12:05:04 10 A. Yes.

12:05:07 11 Q. And in it, Mr. Shader wrote, "Hey, guys, I  
12:05:12 12 think this is a surprising response given the 'small  
12:05:16 13 Valley' phenomenon."

12:05:18 14 Do you know what he's referring to here?

12:05:22 15 A. I do not know.

12:05:24 16 Q. Have you ever heard the term "small Valley  
12:05:26 17 phenomenon" in the context of recruiting and hiring?

12:05:29 18 MR. RUBIN: Objection. Form.

12:05:31 19 THE WITNESS: I have not.

12:05:36 20 MR. HARVEY: Q. Okay. And the next  
12:05:39 21 sentence is, "Omid's and my personal experiences at  
12:05:45 22 Netscape would suggest that it's sometimes hard to  
12:05:48 23 anticipate the long-term consequences of decisions  
12:05:52 24 that are made when things are going well."

12:05:57 25 Do you see that?

12:05:58 1 A. I do.

12:05:59 2 Q. Do you have an understanding of what he was  
12:06:01 3 saying here in terms of what the potential long-term  
12:06:04 4 consequences would be?

12:06:07 5 A. I do think I understand what he's saying.

12:06:11 6 Q. And what's that?

12:06:12 7 A. I think he's saying that Google is doing very  
12:06:15 8 well, and I'm a partner of yours, and you are choosing  
12:06:18 9 not to be helpful to me in this situation. And when  
12:06:23 10 things -- and it's a small world, and I don't appreciate  
12:06:29 11 it.

12:06:31 12 Q. Sort of suggesting that if Google needs  
12:06:35 13 something from Google in the future, Google may not get  
12:06:38 14 the answer it wants?

12:06:42 15 MR. RUBIN: Objection. Form.

12:06:46 16 THE WITNESS: I don't know that that's what  
12:06:47 17 he's saying, but he is clearly saying that -- he's  
12:06:52 18 clearly indicating he's not happy with our choice --  
12:06:56 19 with our decision.

12:06:59 20 MR. HARVEY: Q. Okay. If we could  
12:07:12 21 fast-forward to the next year, 2004. This was a  
12:07:18 22 time of, is it fair to say, explosive growth for  
12:07:23 23 Google?

12:07:24 24 A. We were expanding rapidly.

12:07:26 25 Q. And that rapid expansion included hiring

12:07:28 1 rapidly, correct?

12:07:29 2 A. That is correct.

12:07:42 3 MR. HARVEY: This is a new exhibit. I believe  
12:07:48 4 we're at 1753.

12:08:00 5 (Whereupon, Exhibit 1753 was marked for  
12:08:00 6 identification.)

12:08:06 7 MR. HARVEY: Q. If you could please take a  
12:08:08 8 look at the document and let me know when you are  
12:08:09 9 ready.

12:08:52 10 A. Okay.

12:08:54 11 Q. Without going through a fairly lengthy email --  
12:09:00 12 well, first let me say, this is an email that  
12:09:03 13 Ms. Brown -- pardon me, Ms. Brown sent to you and others  
12:09:07 14 at Google on June 7th, 2004, correct?

12:09:12 15 A. Correct.

12:09:14 16 Q. Is it fair to say that the topic of this  
12:09:16 17 conversation is planning for this rapid growth you just  
12:09:20 18 described?

12:09:22 19 MR. RUBIN: Objection. Form.

12:09:26 20 THE WITNESS: The topic of the email relates to  
12:09:29 21 headcount planning and engineering hiring.

12:09:33 22 MR. HARVEY: Q. Okay. Is it fair to say  
12:09:40 23 that at this time, June 7th, 2004, Google was  
12:09:45 24 gearing up to dramatically increase the rate at  
12:09:49 25 which it was hiring employees?

12:29:58 1 MR. RUBIN: Objection. Form.

12:30:08 2 THE WITNESS: I didn't -- I don't believe I  
12:30:10 3 ever really fully understood it.

12:30:14 4 MR. HARVEY: Q. But did you understand  
12:30:15 5 that it was for internal purposes only?

12:30:18 6 MR. RUBIN: Objection. Form.

12:30:24 7 THE WITNESS: I don't know whether it was or  
12:30:25 8 wasn't an internal confidential list or not.

12:30:30 9 MR. HARVEY: Q. So you don't know, sitting  
12:30:31 10 here today, whether it was shared with other  
12:30:34 11 companies?

12:30:37 12 A. I don't.

12:30:39 13 Q. Do you know, sitting here today, whether a  
12:30:42 14 company was put on or off the list pursuant to an  
12:30:45 15 agreement with that company who made similar commitments  
12:30:51 16 to Google?

12:30:51 17 A. I do not.

12:30:53 18 Q. You don't know one way or the other?

12:30:55 19 A. I don't.

12:30:59 20 Q. Do you recall discussing the do-not-call list  
12:31:05 21 at meetings of the executive management group?

12:31:08 22 A. I vaguely recall discussions around recruiting  
12:31:12 23 policies and procedures, companies and process --  
12:31:18 24 internal processes related to those companies.

12:31:29 25 Q. And in those discussions, was Google's

12:31:33 1 do-not-call list part of those discussions?

12:31:45 2 A. I don't remember referring to the list as a  
12:31:47 3 do-not-call list. I remember discussions around the  
12:31:51 4 issue of proactively cold calling individuals at other  
12:31:57 5 companies or not doing so.

12:32:00 6 Q. And you recall those discussions taking place  
12:32:02 7 at meetings of the executive management group?

12:32:08 8 A. I don't recall whether or not they were the  
12:32:10 9 official Monday executive management group meetings or  
12:32:15 10 other meetings with similar sets of individuals present.

12:32:18 11 Q. Okay. Do you recall when those discussions  
12:32:23 12 began, approximately?

12:32:29 13 A. Sometime after I started. So no, I don't  
12:32:33 14 recall exactly when they began.

12:32:45 15 Q. Do you recall an event or communication that  
12:32:51 16 prompted Google to discuss whether to create a  
12:32:54 17 do-not-call list?

12:32:57 18 MR. RUBIN: Objection. Form.

12:33:01 19 THE WITNESS: I recall events from other  
12:33:05 20 individuals that caused us to discuss the policy. I  
12:33:11 21 don't know the direct -- I don't know the timing of the  
12:33:14 22 do-not-call list, nor do I specifically recall the  
12:33:17 23 do-not-call list. So I can't link the causality between  
12:33:24 24 the two. But I do recall discussions based on  
12:33:27 25 individuals voicing objections.

12:33:30 1 MR. HARVEY: Q. And these individuals were  
12:33:31 2 typically the chief executives of other companies,  
12:33:34 3 correct?

12:33:40 4 A. I think more often than not, the escalation  
12:33:43 5 would come through a chief executive, yes.

12:33:46 6 Q. And those chief executives included Steve Jobs,  
12:33:48 7 correct?

12:33:49 8 A. Definitely.

12:33:52 9 Q. And those chief executives included Paul  
12:33:55 10 Otellini, correct?

12:33:58 11 A. I don't recall Paul specifically calling us,  
12:34:02 12 but I do recall discussions involving Paul on these  
12:34:09 13 issues. But I don't recall a particular discussion -- I  
12:34:12 14 don't recall Paul initiating a discussion.

12:34:15 15 Q. Do you recall anyone else initiating a  
12:34:16 16 discussion with Paul about these issues?

12:34:20 17 A. No. I believe I was involved in discussions  
12:34:29 18 with Paul, but I don't remember whether I initiated  
12:34:32 19 them.

12:34:33 20 Q. Okay. Was Mr. Campbell -- well, he wasn't a  
12:34:45 21 chief executive at the time. I guess he was chairman of  
12:34:48 22 the board of Intuit.

12:34:49 23 Was he one of those individuals who contacted  
12:34:53 24 Google about concerns of Google's recruiting of  
12:34:58 25 employees of his company?

12:35:00 1 MR. RUBIN: Objection. Form.

12:35:04 2 THE WITNESS: I believe Mr. Campbell was  
12:35:07 3 present for some of these discussions. He was usually  
12:35:09 4 present during the Monday after -- he was often present  
12:35:11 5 during the Monday afternoon meetings.

12:35:22 6 MR. HARVEY: Q. Do you recall what the  
12:35:23 7 basic terms of Google's do-not-call list were with  
12:35:30 8 respect to the limitations it imposed on Google?

12:35:39 9 MR. RUBIN: Objection. Form.

12:35:39 10 THE WITNESS: Well, I don't exactly. I believe  
12:35:41 11 it changed over the course of time, and I was generally  
12:35:47 12 ambiguous as to what -- I generally felt the  
12:35:53 13 implications of whatever was on the list was ambiguous.

12:35:59 14 MR. HARVEY: Q. You thought the list  
12:36:03 15 imposed ambiguous restrictions on Google?

12:36:09 16 A. I never went through the details of what was on  
12:36:11 17 the list, or paid super close attention to exactly how  
12:36:15 18 the rules were articulated.

12:36:20 19 Q. Do you have any kind of general understanding  
12:36:22 20 of the limitations that were embodied in the do-not-call  
12:36:27 21 list?

12:36:27 22 MR. RUBIN: Objection. Form.

12:36:32 23 THE WITNESS: Again, since the -- since my  
12:36:34 24 understanding of the policies evolved over time, I can't  
12:36:44 25 tell you specifically what was embodied within those

12:36:47 1 policies at any given point in time.

12:36:49 2 MR. HARVEY: Q. But generally, if a  
12:36:51 3 company was listed on the do-not-call list, then  
12:36:56 4 Google could not cold call into that company,  
12:36:59 5 correct?

12:37:01 6 MR. RUBIN: Objection. Form.

12:37:09 7 THE WITNESS: If recruiters cold called into a  
12:37:11 8 company that was on the list, they could expect that the  
12:37:14 9 other company would escalate and be upset about it.

12:37:18 10 MR. HARVEY: Q. And that initial act of  
12:37:19 11 the recruiter, if it happened, would have been in  
12:37:22 12 violation of the do-not-call list, correct?

12:37:26 13 A. I don't know.

12:37:35 14 Q. Are you aware of any other companies, aside  
12:37:38 15 from Google, that had a similar do-not-call list?

12:37:45 16 A. No.

12:38:01 17 Q. In your experience with other companies, did  
12:38:04 18 any of those companies have anything similar to the  
12:38:09 19 do-not-call list that Google created?

12:38:11 20 MR. RUBIN: Objection. Form.

12:38:16 21 THE WITNESS: Again, I don't know the specifics  
12:38:17 22 of what was on our list. I believe that -- I believe  
12:38:24 23 that I have heard of other companies who, in practice,  
12:38:26 24 chose or chose not to allow their recruiters to solicit  
12:38:31 25 employees of firms that they engaged in business with,

12:38:35 1 and that that is a generally common practice. But not  
12:38:41 2 familiar with the specifics of it.

12:38:50 3 MR. HARVEY: Q. What other companies do  
12:38:51 4 you know of that had a list of companies that the  
12:39:02 5 company could not cold call into?

12:39:15 6 A. Again, I don't know of such a literal list or  
12:39:21 7 what might be on the list. I do remember when I was at  
12:39:24 8 Dialog, which was a Knight Ridder subsidiary, that it  
12:39:28 9 would not have been considered great form to  
12:39:34 10 aggressively pursue the attorneys who were sent by a law  
12:39:39 11 firm to help us with a particular project.

12:39:47 12 Q. Do you know whether Dialog maintained a list of  
12:39:51 13 companies that Dialog could not cold call into?

12:39:55 14 A. No. But I distinctly remember a conversation  
12:39:58 15 about recruiting an attorney that we worked with.

12:40:03 16 Q. When did that conversation occur, basically?

12:40:06 17 A. I don't know. Between 1990 and 1993.

12:40:18 18 Q. Okay. Aside from Dialog, are there any other  
12:40:21 19 companies you know of that had a policy of not cold  
12:40:28 20 calling into specific companies?

12:40:35 21 A. Not that I know of.

12:40:38 22 Q. Do you know whether Intel had such a policy?

12:40:40 23 MR. RUBIN: Objection. Form.

12:40:46 24 THE WITNESS: No, I don't.

12:40:51 25 MR. HARVEY: Q. Did you ever discuss

12:40:52 1 Intel's recruiting activities with anyone at Intel?

12:41:03 2 A. I believe I may have.

12:41:07 3 Q. And what conversations are you thinking of?

12:41:12 4 A. The only person at Intel who I had any regular  
12:41:14 5 interaction with would have been Paul Otellini.

12:41:18 6 Q. Do you recall anything that Paul Otellini said  
12:41:21 7 to you about Intel's recruiting?

12:41:23 8 A. No.

12:41:29 9 Q. Do you know whether Intuit had a list of  
12:41:31 10 companies that Intuit could not cold call into?

12:41:36 11 A. I do not.

12:41:38 12 Q. Do you know whether Apple had a list of  
12:41:40 13 companies that Apple could not cold call into?

12:41:44 14 A. I do not.

12:42:07 15 Q. Was Google's do-not-call list ever discussed at  
12:42:11 16 a meeting of Google's board of directors?

12:42:15 17 A. It may have been.

12:42:16 18 Q. And what makes you think that it may have been?

12:42:26 19 A. Various parties who we've discussed here were  
12:42:28 20 generally at those meetings. And our hiring and  
12:42:38 21 recruiting practices were reported on in those meetings.

12:42:57 22 Q. And Mr. Campbell would often attend meetings of  
12:43:02 23 Google's board of directors, correct?

12:43:03 24 A. Yes.

12:43:17 25 Q. Do you recall an irate call from Steve Jobs to

12:43:24 1 Sergey Brin in February 2005?

12:43:27 2 A. I recall the reporting of Steve being irate.

12:43:32 3 Q. And what do you recall about that?

12:43:44 4 A. That Steve was upset about -- I don't know  
12:43:49 5 which particular conversation you are referring to. I  
12:43:51 6 recall a number of instances in which it was reported  
12:43:56 7 that Steve was irate. And I recall that the general  
12:44:02 8 issues around which he was irate were the hiring of  
12:44:09 9 Apple employees into Google.

12:44:15 10 Q. Do you know who at Google Steve called to  
12:44:19 11 discuss -- to discuss that issue?

12:44:25 12 A. I believe at different times he called  
12:44:27 13 different people. I'm pretty confident that he called  
12:44:29 14 both Eric -- I believe I remember Eric saying he had  
12:44:32 15 received calls, and I believe I remember Sergey saying  
12:44:37 16 he received calls.

12:44:38 17 Q. Aside from Eric Schmidt, I take it, and Sergey  
12:44:41 18 Brin, do you recall any other individuals at Google who  
12:44:46 19 received these calls from Mr. Jobs?

12:44:50 20 A. The only thing I recall specifically is that  
12:44:53 21 Alan Eustace also had a lot of direct discussions with  
12:44:57 22 Steve, but those were the three primary people who Steve  
12:45:00 23 spoke to over the years. I suppose in addition to  
12:45:03 24 Larry. I don't recall a discussion with Larry on this  
12:45:06 25 issue.

12:45:09 1 Q. Was it -- well, how common, if at all, was it  
12:45:19 2 for Steve Jobs to call someone at Google in an irate  
12:45:25 3 fashion?

12:45:27 4 MR. RUBIN: Objection. Form.

12:45:30 5 THE WITNESS: In my experience, our  
12:45:32 6 interactions with Steve -- in our interactions with  
12:45:37 7 Steve, he generally exhibited an irate, difficult,  
12:45:43 8 ornery, and petulant behavior regarding his feelings  
12:45:47 9 about our business dealings.

12:45:52 10 MR. HARVEY: Q. Did you have any -- that  
12:45:54 11 will do.

12:45:55 12 Did you have any direct communications with  
12:45:58 13 Steve Jobs?

12:46:01 14 A. No. Not beyond socially acknowledging his  
12:46:08 15 existence in the context of events.

12:46:14 16 Q. Did you ever attend meetings or conference  
12:46:17 17 calls where Mr. Jobs participated?

12:46:25 18 A. Not that I can recall.

12:46:40 19 Q. Do you recall whether Google first created its  
12:46:48 20 do-not-call list in response to one of these irate calls  
12:46:50 21 from Steve Jobs?

12:46:53 22 A. I recall substantive discussion in the time  
12:46:57 23 frame -- occurring in the time frame of the call from  
12:47:01 24 Steve. I don't know the exact time lines around such a  
12:47:06 25 list or changes to such a list.

12:47:10 1 Q. Why don't we go through some documents --

12:47:12 2 A. Okay.

12:47:13 3 Q. -- that I think can help you.

12:47:16 4 This first one, I don't believe has been  
12:47:19 5 introduced before.

12:47:28 6 (Whereupon, Exhibit 1754 was marked for  
12:47:28 7 identification.)

12:47:41 8 MR. HARVEY: Q. Please let me know once  
12:47:42 9 you've had a chance to examine the document.

12:48:27 10 A. Okay.

12:48:31 11 Q. You know, I should have mentioned this earlier,  
12:48:33 12 but you were on the emg@google.com email list during  
12:48:38 13 this time, correct?

12:48:40 14 A. Absolutely.

12:48:40 15 Q. And you were throughout the time that you were  
12:48:44 16 a member of the EMG, correct?

12:48:47 17 A. Correct.

12:48:50 18 Q. Did you receive this email from Mr. Brin, looks  
12:48:54 19 like on February 13th, 2005?

12:48:57 20 A. I'm sure I did.

12:48:57 21 Q. And this email describes one of the irate calls  
12:49:00 22 we were just talking about, correct?

12:49:01 23 A. Yes, it does.

12:49:06 24 Q. At the bottom of that first paragraph, Mr. Brin  
12:49:10 25 wrote, "He made various veiled threats too, though I am

12:49:15 1 not inclined to hold them against him too much, as he  
12:49:19 2 seemed beside himself, (as Eric would say)."

12:49:25 3 Do you know what various veiled threats  
12:49:31 4 Mr. Jobs made to Mr. Brin?

12:49:32 5 A. No, I don't.

12:49:33 6 Q. Did you ever discuss those veiled threats with  
12:49:36 7 Mr. Brin?

12:49:36 8 MR. RUBIN: Objection. Form.

12:49:41 9 THE WITNESS: It's possible.

12:49:44 10 MR. HARVEY: Q. But you don't remember if  
12:49:45 11 they happened, what the substance of those  
12:49:48 12 conversations were?

12:49:50 13 A. I do not.

12:49:53 14 Q. And here, in what I just read, Mr. Brin says  
12:49:57 15 that Mr. Jobs seemed beside himself, as Eric would say.

12:50:02 16 Do you know what he's talking about there in  
12:50:03 17 terms of sounds like a phrase that Eric Schmidt used to  
12:50:12 18 describe Mr. Jobs?

12:50:13 19 A. I think he's referring to the odd and  
12:50:18 20 idiosyncratic manner of Steve's behavior when he engaged  
12:50:24 21 with other companies and projected a great deal of anger  
12:50:29 22 on an issue in a way that was unlike what many of us are  
12:50:32 23 accustomed to with other executives.

12:50:54 24 Q. Okay. If you could look at Exhibit 561, which  
12:50:57 25 appears to be written that Monday by Ms. Brown.

12:51:08 1 A. The following Monday.

12:51:12 2 Q. Yes. Thank you.

12:51:32 3 A. Okay.

12:51:34 4 Q. Do you recall the meeting of the EMG described  
12:51:38 5 in this document that took place on February 14th, 2005?

12:51:45 6 A. I believe I was there, but I don't recall the  
12:51:47 7 specifics of the meeting.

12:51:50 8 Q. Do you recall, generally, that the senior  
12:51:53 9 executives of Google at that meeting discussed Steve  
12:51:58 10 Jobs' call and what to do about it?

12:52:04 11 A. I don't recall the discussion occurred at that  
12:52:07 12 management meeting, but it seems likely, given the dates  
12:52:10 13 and times on these emails.

12:52:14 14 Q. And Ms. Brown wrote in this email, "We agreed  
12:52:20 15 in EMG today that we would treat three companies in a  
12:52:25 16 special way going forward, Genentech, Intel, and Apple."

12:52:31 17 Do you know why Genentech and Intel were  
12:52:33 18 included with Apple here?

12:52:35 19 MR. RUBIN: Objection. Form.

12:52:36 20 THE WITNESS: I don't.

12:52:39 21 MR. HARVEY: Q. Do you know whether Paul  
12:52:42 22 at Intel or Mr. Levinson at Genentech made similar  
12:52:47 23 calls to Google at the time?

12:52:51 24 A. I do not.

12:52:57 25 Q. Do you recall anything about the discussion

12:52:59 1 that led to the decision to put these three companies on  
12:53:05 2 a do-not-call list?

12:53:09 3 A. I do not.

12:53:22 4 MR. HARVEY: Okay. I believe this will be  
12:53:39 5 Exhibit 1755.

12:53:53 6 (Whereupon, Exhibit 1755 was marked for  
12:53:53 7 identification.)

12:53:58 8 MR. HARVEY: Q. If you could please let me  
12:53:59 9 know once you've had a chance to examine the  
12:54:02 10 document.

12:54:54 11 A. Okay.

12:54:56 12 Q. Is this another example of the irate calls that  
12:55:00 13 we were talking about earlier?

12:55:01 14 A. Yes, it is.

12:55:04 15 Q. And Mr. Brown -- I'm sorry. Mr. Brin wrote  
12:55:10 16 this to you and others on the following Thursday of that  
12:55:16 17 week, February 17th, 2005; is that correct?

12:55:19 18 A. Yes, it is.

12:55:26 19 Q. And Mr. Brin wrote, in part, that Steve Jobs  
12:55:28 20 said, "If you hire a single one of these people, that  
12:55:32 21 means war."

12:55:36 22 Do you recall discussing this threat with  
12:55:41 23 Mr. Brin or anyone else at Google?

12:55:43 24 MR. RUBIN: Objection. Form.

12:55:45 25 THE WITNESS: I do not.

12:55:54 1 MR. HARVEY: Q. Do you know whether  
12:55:59 2 Mr. Campbell participated in the executive  
12:56:01 3 management group meeting that occurred on Monday of  
12:56:03 4 that week?

12:56:05 5 A. I do not.

12:56:06 6 Q. Do you have an understanding of why Mr. Brin  
12:56:09 7 copied Mr. Campbell on this email?

12:56:15 8 MR. RUBIN: Objection. Form.

12:56:19 9 THE WITNESS: Mr. Campbell was often copied on  
12:56:23 10 emails related to the EMG.

12:56:31 11 MR. HARVEY: Q. Do you have an  
12:56:32 12 understanding that Mr. Campbell had a relationship  
12:56:36 13 with Mr. Jobs at the time?

12:56:39 14 A. Yes, I do.

12:56:41 15 Q. And what was that relationship, to your  
12:56:43 16 understanding?

12:56:46 17 A. They were business associates and friends.

12:56:57 18 Q. Did Google ever use Mr. Campbell as kind of a  
12:57:06 19 back channel to Mr. Jobs?

12:57:12 20 MR. RUBIN: Objection. Form.

12:57:14 21 THE WITNESS: What's a back -- define back  
12:57:16 22 channel.

12:57:18 23 MR. HARVEY: Q. As another means of  
12:57:20 24 communication that is not a direct Google to Apple,  
12:57:25 25 but where Mr. Campbell would talk to Mr. Jobs about

12:57:29 1 a topic and then report back to Google.

12:57:35 2 A. Mr. Campbell talked to the management team at  
12:57:36 3 Google and Mr. Campbell talked to Mr. Jobs, and you'd  
12:57:43 4 have to ask him specifically what he spoke about.

12:57:49 5 Q. When there was some tension between Google and  
12:57:56 6 Mr. Jobs, did Mr. Campbell ever try to diffuse that  
12:58:01 7 tension by talking to Mr. Jobs on his own and then  
12:58:05 8 reporting back to Google?

12:58:07 9 MR. RUBIN: Objection. Form.

12:58:07 10 THE WITNESS: You would have to ask  
12:58:09 11 Mr. Campbell.

12:58:09 12 MR. HARVEY: Q. Well, but you worked at  
12:58:11 13 Google at the time, and you knew Mr. Campbell quite  
12:58:13 14 well, so I'm asking you whether you're aware of that  
12:58:18 15 ever occurring.

12:58:19 16 MR. RUBIN: Same objection.

12:58:21 17 THE WITNESS: It seems like the kind of thing  
12:58:24 18 that -- it seems like the kind of thing that it's  
12:58:28 19 reasonable to assume occurred. I can't give you a  
12:58:31 20 specific instance of it occurring.

12:58:43 21 MR. RUBIN: How about one more document, Dean,  
12:58:44 22 and then we'll break if that's okay. Or you want to  
12:58:47 23 break now?

12:58:48 24 MR. HARVEY: Let me just see where I am. You  
12:59:02 25 know, I'd like to push through a bit longer, unless you

12:59:05 1 want to take a break and I'll take a break. That's  
12:59:07 2 fine.

12:59:07 3 MR. RUBIN: It's up to you. I was thinking  
12:59:09 4 it's getting a little late -- I mean, we're moving to  
12:59:12 5 1:00 o'clock for lunch, if you can go another -- what do  
12:59:15 6 you think, another ten minutes?

12:59:17 7 MR. HARVEY: It depends. There is this kind of  
12:59:20 8 topic -- I mean, it might be 20, 30 minutes.

12:59:23 9 MR. RUBIN: Let's go ahead and break now, then.

12:59:25 10 THE WITNESS: Okay. Let's break now.

12:59:26 11 THE VIDEOGRAPHER: Okay. We are now off the  
12:59:27 12 record at 12:59.

01:22:55 13 (Recess taken.)

01:48:57 14 THE VIDEOGRAPHER: We are now on the record at  
01:49:00 15 1:48.

01:49:02 16 MR. HARVEY: Q. I believe before the break  
01:49:03 17 we were talking about Mr. Campbell vis-a-vis Google  
01:49:07 18 and Apple, and a week in February 2005 when Apple  
01:49:14 19 created its do-not-call list. Do you recall whether  
01:49:20 20 that week, or thereabouts, Mr. Campbell reported the  
01:49:26 21 fact that Apple -- or that Google would not recruit  
01:49:31 22 from Apple any longer to Mr. Jobs?

01:49:35 23 A. I do not, nor am I aware of there being an  
01:49:39 24 Apple do-not-call list. You said Apple created a  
01:49:44 25 do-not-call list. I thought we were talking about the

01:49:46 1 Google do-not-call list.

01:49:48 2 Q. You're right, and that was my mistake. Thank  
01:49:51 3 you for the correction. I was trying to refer to the  
01:49:53 4 Google do-not-call list.

01:49:55 5 And I presume, then, that your answer wouldn't  
01:49:58 6 change --

01:49:58 7 A. Correct.

01:49:59 8 Q. -- given that clarification.

01:50:05 9 If you could look at Exhibit 199.

01:50:13 10 Let me know when you are ready.

01:50:33 11 A. Okay.

01:50:36 12 Q. And I'll note I realize you are not on this  
01:50:38 13 email. That the email labeled Exhibit 199 was sent from  
01:50:46 14 Bill Campbell to Steve Jobs on Friday of that week,  
01:50:49 15 February 18th, 2005.

01:50:53 16 Did you ever discuss with Mr. Campbell the fact  
01:50:55 17 that he had made this communication with Mr. Jobs?

01:50:59 18 A. It's possible.

01:51:03 19 Q. Do you recall anything about that conversation,  
01:51:09 20 if it happened?

01:51:10 21 A. No, I don't.

01:51:26 22 Q. Is this email consistent with what you  
01:51:30 23 understood Bill Campbell -- Bill Campbell's practices  
01:51:40 24 with respect to communicating back and forth between  
01:51:44 25 Google and Apple?

01:51:46 1 A. It's clearly an example of Bill communicating  
01:51:49 2 back and forth between us and Steve Jobs, yes.

01:51:56 3 Q. Do you know whether Mr. Campbell reported back  
01:51:59 4 to Google that Steve Jobs had agreed that the  
01:52:07 5 restriction would be mutual? That is, that Apple agreed  
01:52:12 6 not to recruit out of Google?

01:52:15 7 MR. RUBIN: Objection. Form.

01:52:19 8 THE WITNESS: I don't know.

01:52:23 9 MR. HARVEY: Q. Do you recall any  
01:52:24 10 conversation with Mr. Campbell or anyone else on the  
01:52:27 11 topic of whether -- whether Apple reciprocated and  
01:52:35 12 agreed not to recruit Google employees?

01:52:40 13 A. I recall that in the climate, that would seem  
01:52:42 14 like an unlikely thing to be discussing because it --  
01:52:46 15 the hiring dynamic was asymmetric. We were hiring  
01:52:51 16 people from them, they weren't really hiring people from  
01:52:54 17 us. We were about to go public or had recently gone  
01:52:57 18 public. So Apple's hiring of Google employees simply  
01:53:02 19 wasn't an issue.

01:53:15 20 Q. If you could please look at Exhibit 563.

01:53:28 21 A. Okay.

01:53:29 22 Q. And I'll note that this occurs in the same  
01:53:32 23 month, shortly after the last email from Mr. Campbell to  
01:53:36 24 Mr. Jobs.

01:53:41 25 Do you know who Danielle Lambert is?

01:53:43 1 A. No, I don't.

01:53:55 2 Q. Does this document refresh your recollection at  
01:53:56 3 all about an agreement between Apple and Google not to  
01:53:59 4 recruit from one another?

01:54:01 5 A. No.

01:54:16 6 Q. Do you know whether Mr. Jobs approached other  
01:54:18 7 companies in a similar way for a similar purpose to get  
01:54:23 8 other companies to agree not to recruit Apple employees?

01:54:26 9 MR. RUBIN: Objection. Form.

01:54:29 10 THE WITNESS: I do not.

01:54:33 11 MR. HARVEY: Q. Did you ever discuss that  
01:54:33 12 possibility with anyone at Apple -- I'm sorry, with  
01:54:36 13 anyone at Google?

01:54:40 14 MR. RUBIN: Objection. Form.

01:54:42 15 THE WITNESS: Not that I can recall.

01:54:54 16 MR. HARVEY: Q. If you can please take a  
01:54:56 17 look at Exhibit 448. And I'll represent to you that  
01:55:13 18 this document is a little different than the other  
01:55:15 19 documents I'll show you in that the first part of  
01:55:17 20 the document was written for this case, and it's a  
01:55:20 21 declaration of Mr. Colligan who was CEO of Palm at  
01:55:25 22 the time of the events described. And then there  
01:55:27 23 are two emails attached to his declaration that are  
01:55:32 24 communications between him and Mr. Jobs.

01:55:34 25 A. Okay. Well, I haven't read it all, but....

02:15:42 1 Okay.

02:15:45 2 Q. You are not on this communication, but it  
02:15:47 3 appears to be one in which Ms. Brown is asking for the  
02:15:55 4 current version of the do-not-call list for a discussion  
02:15:58 5 of -- at the executive management group that occurred on  
02:16:07 6 the 23rd of April, 2007.

02:16:09 7 If you could turn to the attachment on the  
02:16:11 8 first page, the heading states, "Protocol for 'Do Not  
02:16:20 9 Cold Call' and 'Sensitive' Companies." And then it  
02:16:24 10 states, "The following companies (and by association,  
02:16:27 11 their subsidiaries) have special agreements with Google  
02:16:32 12 and are part of the 'Do Not Cold Call' list." And then  
02:16:37 13 several companies are listed. Do you see that?

02:16:41 14 A. Uh-huh. Yes.

02:16:44 15 Q. Is this, what I've read so far through the list  
02:16:47 16 of parent companies, is that, to your knowledge, an  
02:16:50 17 accurate description of Google's do-not-cold-call list  
02:16:55 18 at the time?

02:16:56 19 MR. RUBIN: Objection. Form.

02:17:03 20 THE WITNESS: I don't know.

02:17:04 21 MR. HARVEY: Q. You don't have an opinion  
02:17:06 22 one way or the other?

02:17:10 23 A. I do not.

02:17:15 24 Q. Do you recall discussing -- or do you recall  
02:17:19 25 this particular version of the do-not-call list being

02:17:23 1 passed out and discussed at the meeting of the EMG on  
02:17:27 2 the 23rd of April, 2007?

02:17:30 3 A. I do not.

02:17:32 4 Q. Okay. I believe you testified earlier that  
02:18:24 5 Bill Campbell regularly attended meetings of the  
02:18:28 6 executive management group?

02:18:30 7 A. Correct.

02:18:31 8 Q. So it's fair to say that he participated in  
02:18:35 9 discussions concerning the do-not-call list, correct?

02:18:39 10 MR. RUBIN: Objection. Form.

02:18:46 11 THE WITNESS: Bill often did not participate in  
02:18:47 12 discussions but listened. So I'm not sure that I can  
02:18:49 13 say that he participated in discussions of the  
02:18:52 14 do-not-call list.

02:18:53 15 MR. HARVEY: Q. Sure. Why don't I clarify  
02:18:55 16 the word participate. Well, why don't I modify it.

02:19:00 17 Did Bill Campbell -- well, scratch that.

02:19:04 18 Is it fair to say that Bill Campbell attended  
02:19:07 19 meetings at Google in which Google's do-not-call list  
02:19:10 20 was discussed?

02:19:16 21 MR. RUBIN: Objection. Form.

02:19:19 22 THE WITNESS: Bill was at the vast majority of  
02:19:20 23 the management meetings, not as many of those as I was,  
02:19:23 24 so I cannot separate out in my head which meetings he  
02:19:26 25 was at and which meetings he wasn't. But generally it

02:19:30 1 does seem probable that over the course of time, he was  
02:19:33 2 present when some of these issues were discussed.

02:19:41 3 MR. HARVEY: Q. Do you recall, in 2005,  
02:19:42 4 Mr. Campbell contacting you to complain about  
02:19:51 5 Google's recruiting of Intuit people?

02:19:53 6 A. No, I do not.

02:20:04 7 Q. If you could please take a look at Exhibit 193.

02:20:50 8 A. Okay.

02:20:52 9 Q. If you could focus on Bill Campbell, it looks  
02:20:56 10 like an email to you, which is the second one up from  
02:21:00 11 the bottom on the first page.

02:21:01 12 A. Yes.

02:21:02 13 Q. Did Bill Campbell write you this email on  
02:21:04 14 November 18th, 2005?

02:21:06 15 A. Yes.

02:21:08 16 Q. And he says, "Jonathan, are you guys nuts."

02:21:11 17 A. Yes.

02:21:15 18 Q. What did you understand Mr. Campbell to be  
02:21:17 19 doing here?

02:21:18 20 A. I don't recall. But from the context of the  
02:21:20 21 thread, he's clearly referring to our recruiting a CMO  
02:21:26 22 from Intuit.

02:21:31 23 Q. In response to this, did you have any  
02:21:35 24 communications with Mr. Campbell about Google's  
02:21:39 25 recruiting of Intuit people?

02:21:43 1 A. I don't recall.

02:21:47 2 Q. Do you recall making any assurances to him that  
02:21:50 3 Google would stop recruiting Intuit people?

02:21:53 4 MR. RUBIN: Objection. Form.

02:22:02 5 THE WITNESS: I don't recall anything other  
02:22:03 6 than escalating this to Shona and Martha, who evidently  
02:22:10 7 said they would take care of it.

02:22:13 8 MR. HARVEY: Q. And the matter was taken  
02:22:14 9 care of as far as you were concerned?

02:22:16 10 MR. RUBIN: Objection. Form.

02:22:19 11 THE WITNESS: Well, the issue of -- I believe  
02:22:24 12 recruiting for this particular individual -- well, I  
02:22:27 13 guess I don't know. Martha says, we can't call the CMO  
02:22:44 14 after the first discussion, so I assume that was the end  
02:22:47 15 of it.

02:22:59 16 MR. HARVEY: Q. Do you recall, subsequent  
02:23:01 17 to that, Bill Campbell asking Shona Brown to put  
02:23:09 18 Intuit on the do-not-call list?

02:23:12 19 A. I don't.

02:23:14 20 Q. Okay. Do you recall having any discussions  
02:23:36 21 with anyone at Google about putting Intuit fully on the  
02:23:41 22 do-not-call list?

02:23:43 23 MR. RUBIN: Objection. Form.

02:23:46 24 THE WITNESS: I don't.

02:24:15 25 MR. HARVEY: Q. Switching gears a bit to

02:31:33 1 THE WITNESS: Unusual to -- say that again? It  
02:31:35 2 would be unusual?

02:31:36 3 MR. HARVEY: Q. This gets back to  
02:31:37 4 something we discussed at the beginning, in that  
02:31:40 5 here you appear to be saying that you're going to  
02:31:47 6 notify [REDACTED]'s management at Intel before actually  
02:31:52 7 finalizing an agreement with [REDACTED] to come work for  
02:31:55 8 Google --

02:31:57 9 MR. RUBIN: Objection. Form.

02:31:57 10 MR. HARVEY: Q. -- and so --

02:31:59 11 MR. RUBIN: Sorry. I thought you were done.

02:32:00 12 MR. HARVEY: I'm trying to clarify the  
02:32:01 13 question.

02:32:04 14 Q. And so my question is, given our prior  
02:32:11 15 conversation, would you agree that that's an unusual  
02:32:14 16 thing for Google to do, given that you were putting [REDACTED]  
02:32:19 17 into an awkward spot?

02:32:21 18 MR. RUBIN: Objection. Form.

02:32:23 19 THE WITNESS: I guess I just don't understand  
02:32:24 20 what I'm being asked.

02:32:26 21 MR. HARVEY: Q. Here in this email you are  
02:32:36 22 talking about notifying [REDACTED]'s management before  
02:32:38 23 even getting to the stage of specifically discussing  
02:32:41 24 an offer with [REDACTED], correct?

02:32:47 25 A. All I'm saying is that I had a discussion with

02:32:52 1 Bill and felt that a scenario could evolve in which I  
02:32:57 2 want to give a courtesy call to Paul Otellini. But [REDACTED]  
02:33:00 3 was coming tomorrow, and I'll find out how [REDACTED] wants to  
02:33:05 4 handle the communication with his own management. And  
02:33:08 5 we haven't even gotten to the stage of specifically  
02:33:10 6 discussing an offer yet. So my next step is to speak to  
02:33:14 7 [REDACTED] and then determine what I need to do next.

02:33:28 8 Q. Do you recall what [REDACTED]'s -- well, sorry. Did  
02:33:33 9 you, in fact, meet with [REDACTED] the next day?

02:33:35 10 A. I don't remember.

02:33:39 11 Q. Do you recall speaking with [REDACTED] about this  
02:33:43 12 issue?

02:33:44 13 A. I do not.

02:33:47 14 Q. Did [REDACTED] come to work for Google?

02:33:49 15 A. I don't know.

02:33:51 16 Q. Okay. That's something presumably we can  
02:33:56 17 check.

02:34:11 18 Actually, this is the end of a segment. Why  
02:34:14 19 don't we take a break.

02:34:16 20 THE VIDEOGRAPHER: We are now off the record at  
02:34:17 21 2:34.

02:34:22 22 (Recess taken.)

02:48:36 23 THE VIDEOGRAPHER: We are now on the record at  
02:48:37 24 2:48.

02:48:38 25 MR. HARVEY: Q. I'm going to change topics

02:48:42 1 and go forward in time a bit --

02:48:45 2 A. Okay.

02:48:45 3 Q. -- to about 2007.

02:48:49 4 A. Okay.

02:48:51 5 Q. Do you recall that at about that time and in  
02:48:53 6 that year, Google began to get particularly concerned  
02:48:58 7 with Facebook's recruiting of Google employees?

02:49:03 8 A. I don't recall that it was that time or year,  
02:49:05 9 but it sounds roughly correct, and I do recall Google  
02:49:09 10 being concerned about Facebook's recruiting.

02:49:14 11 Q. And why did Facebook present a concern for  
02:49:19 12 Google in that regard?

02:49:25 13 A. Because they were the next hot, young, pre-IPO  
02:49:30 14 startup company.

02:49:32 15 Q. They were sort of like where Google was several  
02:49:34 16 years prior?

02:49:35 17 A. Relative to large, established companies in the  
02:49:38 18 Valley, yes, in many ways, that analogy is correct.

02:49:44 19 Q. And here, the roles were switched a bit where  
02:49:48 20 Google had become something of an established company  
02:49:51 21 trying to fend off the young upstart; is that fair?

02:50:06 22 MR. RUBIN: Objection. Form.

02:50:06 23 THE WITNESS: I think as I said before, Google  
02:50:08 24 was the -- at this stage, Facebook was the young, hot,  
02:50:12 25 pre-IPO startup and Google was a larger, more

02:50:15 1 established firm.

02:50:17 2 MR. HARVEY: Q. Okay. If you could please  
02:50:34 3 take a look at Exhibit 660.

02:51:16 4 A. Okay.

02:51:17 5 Q. Okay. Did you receive Mr. Brin's email here on  
02:51:22 6 the 13th of October, 2007?

02:51:24 7 A. Yes.

02:51:26 8 Q. Okay. And this is an example of the kinds of  
02:51:28 9 discussions that Google was having about the retention  
02:51:36 10 risk for Google employees presented by Facebook; is that  
02:51:40 11 correct?

02:51:45 12 A. That is -- the subject of discussion does  
02:51:48 13 relate to Facebook and retention of Google employees.

02:51:54 14 Q. And then you forwarded that email to Bill  
02:51:56 15 Campbell the same day, correct?

02:51:58 16 A. Yes.

02:52:02 17 Q. Is there a reason why you would forward an  
02:52:03 18 email like this to Mr. Campbell?

02:52:07 19 A. Again, as my closest management advisor, with  
02:52:11 20 whom I discussed many of the important issues on Eric's  
02:52:17 21 staff, it was customary from time to time for me to send  
02:52:22 22 messages to Eric's staff that he might not have received  
02:52:26 23 to him.

02:52:30 24 Q. And this threat that Facebook posed, this was  
02:52:32 25 one of the topics you discussed with Mr. Campbell?

02:52:36 1 MR. RUBIN: Objection. Form.

02:52:41 2 THE WITNESS: I did discuss the threat from  
02:52:43 3 Facebook from time to time with Mr. Campbell.

02:52:52 4 MR. HARVEY: Q. What, to your knowledge,  
02:52:54 5 was Mr. Campbell's view of how Google should respond  
02:52:58 6 to the threat from Facebook?

02:53:03 7 A. I don't remember his specific broad view, or  
02:53:11 8 how it changed over time.

02:53:15 9 Q. Do you recall discussing with him alternative  
02:53:21 10 strategies in terms of how to retain Google employees in  
02:53:29 11 light of the Facebook threat?

02:53:35 12 A. I recall him being helpful as we attempted to  
02:53:39 13 implement policies that would allow us to respond  
02:53:45 14 expeditiously to Facebook's threats.

02:53:51 15 Q. And what type of expeditious responses are you  
02:54:01 16 referring to?

02:54:02 17 A. [REDACTED]  
02:54:04 18 [REDACTED], counteroffers, speaking to  
02:54:15 19 employees himself, if he could -- because he was a  
02:54:18 20 management coach and mentor for them. Any number of  
02:54:22 21 measures.

02:54:26 22 Q. Was Mr. Campbell helpful in getting the  
02:54:30 23 relevant players at Google to agree that Google should

02:54:35 24 [REDACTED]

02:54:39 25 [REDACTED]

02:54:49 1 A. [REDACTED]  
02:54:51 2 [REDACTED], and I recall often leaning  
02:54:56 3 on Bill to get his assistance to help the management  
02:54:58 4 team reach closure on important decisions. I don't  
02:55:02 5 specifically recall him assisting in that particular  
02:55:08 6 way.

02:55:14 7 Q. And would Bill's assistance include convincing  
02:55:18 8 other senior members of Google's executive team, such as  
02:55:22 9 Eric Schmidt?

02:55:24 10 MR. RUBIN: Objection. Form.

02:55:29 11 THE WITNESS: Bill operated across the entire  
02:55:30 12 management team, and he and I often discussed goals that  
02:55:34 13 we collectively had and how to get to a decision or  
02:55:41 14 action as quickly as possible.

02:56:01 15 MR. HARVEY: Q. If you could please take a  
02:56:02 16 look at Exhibit 608.

02:56:39 17 A. Okay.

02:56:48 18 Q. Is this an example of the expeditious response  
02:56:52 19 you were just describing?

02:56:53 20 A. Yes, it appears to be.

02:56:56 21 Q. And this is describing a policy Google had at  
02:56:59 22 the point in time of [REDACTED]

02:57:04 23 [REDACTED]

02:57:08 24 [REDACTED]

02:57:08 25 A. Yes.

02:57:18 1 Q. And did you receive this top email from

02:57:20 2 Mr. Schmidt on the 14th of November, 2007?

02:57:22 3 A. I'm sure I did.

02:57:23 4 Q. Okay. Do you have an understanding of why

02:57:28 5 Mr. Schmidt was concerned that this policy was leaked to  
02:57:33 6 other employees of Google?

02:57:38 7 A. As a general rule, it was understood that  
02:57:43 8 discussions that occurred at the senior management team  
02:57:48 9 were not to be shared widely with employees unless it  
02:57:54 10 was agreed that the information would be shared with  
02:57:56 11 employees.

02:58:16 12 Q. Did Google monitor how effective these  
02:58:18 13 strategies were at retaining Google employees?

02:58:22 14 A. Yes.

02:58:24 15 Q. Do you recall what the view was about whether  
02:58:30 16 efforts [REDACTED] was effective  
02:58:33 17 in retaining people?

02:58:36 18 A. I believe we thought it was effective. I don't  
02:58:38 19 recall what the data showed, but I certainly believe  
02:58:42 20 that the management team thought it was important and  
02:58:44 21 strongly encouraged each other to do it.

02:59:00 22 Q. Do you recall whether any members of the senior  
02:59:07 23 executive team were concerned that [REDACTED]  
02:59:11 24 [REDACTED], that  
02:59:15 25 it would encourage people to go and shop for an offer

02:59:17 1 from Facebook?

02:59:19 2 A. Yeah.

02:59:26 3 Q. And Sergey Brin held that opinion; is that  
02:59:30 4 correct?

02:59:32 5 A. I'm confident he articulated that opinion at  
02:59:34 6 some points in time. I don't know that he always held  
02:59:37 7 that opinion, but I do recall hearing him say that.

02:59:58 8 Q. If you would please look at Exhibit 613.

03:00:25 9 A. Okay.

03:00:28 10 Q. Did you receive this email from Ms. Mayer on  
03:00:33 11 March 14th, 2008?

03:00:35 12 A. Yes.

03:00:36 13 Q. And this describes the concern we were just  
03:00:40 14 talking about in terms of worrying that word would get  
03:00:43 15 out to other Google employees that Google was making  
03:00:47 16 counteroffers to certain employees; is that right?

03:00:57 17 A. Yes. It says that rumors and reports, that if  
03:01:01 18 you want something, you should go out and get a  
03:01:05 19 competitive offer.

03:01:19 20 Q. Do you recall -- see, I guess summer of 2008 or  
03:01:29 21 so, whether there was a discussion at Google to try an  
03:01:35 22 alternative strategy, that is, to contact Facebook  
03:01:41 23 directly and try to discourage Facebook from recruiting  
03:01:45 24 Google people?

03:01:48 25 MR. RUBIN: Objection. Form.

03:01:49 1 THE WITNESS: I don't recall the specific time,  
03:01:51 2 but I do recall talking to Sheryl at Facebook about  
03:01:57 3 minimizing the degree to which they recruited Google  
03:02:00 4 employees.

03:02:02 5 MR. HARVEY: Q. And you know what, we'll  
03:02:08 6 get to that in just a minute. Before we -- I'll  
03:02:11 7 show you those emails, we'll talk about it.

03:02:15 8 But for now, before you actually contacted  
03:02:19 9 Sheryl Sandberg, do you recall discussions at Google  
03:02:24 10 about trying to convince Facebook to enter into a truce  
03:02:29 11 with Google with respect to recruiting?

03:02:32 12 MR. RUBIN: Objection. Form.

03:02:35 13 THE WITNESS: I certainly don't recall the  
03:02:37 14 timing of these things. I recall many -- I'm aware of  
03:02:43 15 the fact that there were many discussions regarding what  
03:02:46 16 to do about the problem of Facebook recruiting Google  
03:02:50 17 employees.

03:02:51 18 MR. HARVEY: Q. And was one potential  
03:02:52 19 response seeking a truce with Facebook.

03:02:55 20 MR. RUBIN: Objection. Form.

03:02:58 21 THE WITNESS: Well, as we talked about before  
03:03:00 22 when we were talking about Apple, we weren't doing any  
03:03:04 23 recruiting from them at the time.

03:03:08 24 MR. HARVEY: Q. Uh-huh.

03:03:09 25 A. So the only thing I remember is trying to

03:03:11 1 minimize the degree to which they were recruiting from  
03:03:14 2 us.

03:03:22 3 Q. Google didn't try to recruit back employees  
03:03:24 4 that it lost to Facebook?

03:03:27 5 A. We did. And, in fact, we recruited -- there is  
03:03:31 6 an employee that we recruited back from Facebook, but it  
03:03:34 7 had not -- the scope of our recruiting from Facebook had  
03:03:37 8 not risen to a level that they seemed concerned about  
03:03:40 9 it. So I don't ever recall them bringing it up with us.

03:03:58 10 Q. If you could please look at Exhibit 616.

03:04:33 11 I'm going to start by asking you about the last  
03:04:36 12 email on the back.

03:04:37 13 A. All right.

03:05:04 14 Okay.

03:05:06 15 Q. Did you receive this email from Ms. Brown on  
03:05:09 16 June 23rd, 2008?

03:05:11 17 A. Yes.

03:05:12 18 Q. Okay. And in it she says that Bill Campbell,  
03:05:16 19 you, and her spoke on that day about, "really doubling  
03:05:22 20 down on our efforts to recruit back a couple of people,  
03:05:25 21 I'd assume at a high cost, just to stem the tide and  
03:05:30 22 give us a better negotiating position on a recruiting  
03:05:34 23 'truce'." Do you see that?

03:05:38 24 A. I do.

03:05:39 25 Q. Do you recall the conversation she's

03:05:41 1 describing?

03:05:42 2 A. I don't.

03:05:44 3 Q. Okay. And then she continues, "Our intent  
03:05:49 4 would be to only do this for 2 or 3 people (and then  
03:05:53 5 stop, so we don't send a message that we will pay that  
03:05:56 6 sort of price across the board) just enough to get a  
03:06:00 7 truce."

03:06:03 8 Do you understand that that was a strategy that  
03:06:11 9 Google attempted?

03:06:12 10 MR. RUBIN: Objection. Form.

03:06:14 11 THE WITNESS: I understand that it's a sentence  
03:06:16 12 that she wrote in this email. I don't know that it was  
03:06:21 13 a strategy that we attempted. I know of an individual  
03:06:25 14 we attempted to hire back. But with respect to whether  
03:06:31 15 or not that was an agreed-to company strategy, I don't  
03:06:34 16 know.

03:06:48 17 MR. HARVEY: Q. And here's Exhibit 666,  
03:06:51 18 which I believe is one of the emails you are  
03:06:53 19 referring to between you and Sheryl Sandberg.

03:07:09 20 A. Okay. What portion do you want to talk about?

03:07:11 21 Q. Sure. I'm going to start by talking about, it  
03:07:16 22 looks like, the beginning of your first email to her on  
03:07:21 23 August 9th, 2008 that begins on page 3.

03:07:26 24 A. Okay.

03:07:30 25 Q. In the second paragraph you -- well first, let

03:07:34 1 me ask, did you send this email to Ms. Sandberg on  
03:07:39 2 August 9th, 2008?

03:07:45 3 A. Yes.

03:07:46 4 Q. In the second paragraph you wrote, "I am sorry  
03:07:48 5 that broader relations seem to be at Defcon 2 at the  
03:07:53 6 corporate level with us right now. Maybe there is a  
03:07:55 7 path to navigate where we agree to stay out of each  
03:07:58 8 other's way and do no harm." Do you see that?

03:08:02 9 A. Yes.

03:08:02 10 Q. What were you referring to by Defcon 2?

03:08:10 11 A. I assume it's an allusion to the Department of  
03:08:14 12 Defense nuclear status levels, and I'm simply pointing  
03:08:20 13 out in a colorful way that the companies are not happy  
03:08:24 14 with each other at the moment.

03:08:26 15 Q. And why weren't the companies happy with each  
03:08:29 16 other?

03:08:30 17 A. Primarily because of the number of people that  
03:08:32 18 she was recruiting from Google, I believe.

03:08:35 19 Q. Okay. And then next sentence in that  
03:08:42 20 paragraph is, "Maybe there is a path to navigate where  
03:08:47 21 we agree to stay out of each other's way and do no  
03:08:50 22 harm." Do you see that?

03:08:51 23 A. Uh-huh.

03:08:52 24 Q. What path were you referring to here?

03:08:55 25 A. Doesn't say.

03:08:55 1 Q. Well, but I have the fortune of having you in  
03:08:59 2 front of me so I can ask you.

03:09:01 3 What did you mean by saying there is a path to  
03:09:03 4 navigate where -- where the two of you would agree to  
03:09:08 5 stay out of each other's way?

03:09:14 6 A. Presumably that I could find out what we at  
03:09:19 7 Google were upset about and try to convince her to stop.

03:09:23 8 Q. To stop hiring Google people, correct?

03:09:27 9 A. Or reduce it.

03:09:31 10 Q. And then if you go up to Sandberg's response to  
03:09:35 11 that, she asked the same question I asked about  
03:09:38 12 Defcon 2. And she says, you know, essentially that she  
03:09:43 13 doesn't know what you are talking about.

03:09:45 14 And then in your response to her you wrote, "I  
03:09:50 15 was referring to the broad relations between us,  
03:09:54 16 primarily related to employees leaving from one company  
03:09:56 17 and going to the other which have severely strained  
03:09:59 18 relations." Is that correct?

03:10:00 19 A. Yeah.

03:10:02 20 MR. RUBIN: Objection. Form.

03:10:02 21 MR. HARVEY: Q. And that's essentially  
03:10:04 22 what you were just talking about, correct?

03:10:06 23 A. It's referring to the fact that she's hiring  
03:10:08 24 Google employees at an inordinately fast rate.

03:10:15 25 Q. And then in her reply to that she says, "On

03:10:23 1 that, I will say the same thing I keep saying. We have  
03:10:26 2 many applicants from all over -- including Google. I  
03:10:29 3 would say that our applicant pool is fairly broad and  
03:10:33 4 Google does not represent an inordinate amount, but  
03:10:36 5 there are a steady stream of people applying." And then  
03:10:40 6 she says, "We are being very strict on the Google  
03:10:43 7 non-solicit."

03:10:44 8 Do you have an understanding what she means by  
03:10:45 9 the "Google non-solicit"?

03:10:47 10 A. I believe she's talking about the  
03:10:49 11 nonsolicitation in a standard Google hiring agreement.

03:10:53 12 Q. And that is that Google employees agreed in  
03:11:02 13 some respect that if they left Google, they wouldn't try  
03:11:05 14 to recruit their former coworkers or something to that  
03:11:06 15 effect; is that what you mean?

03:11:08 16 A. I believe it says they wouldn't solicit their  
03:11:11 17 coworkers for a period of 12 months.

03:11:14 18 Q. And then you responded to her in part by  
03:11:29 19 saying, "My personal opinion is that I think you are  
03:11:33 20 putting too much weight in your view of the notion of  
03:11:35 21 'not soliciting' as though soliciting in itself is the  
03:11:39 22 only thing that upsets people. Rather, it is the  
03:11:42 23 outcome of people going from one company to the other  
03:11:44 24 which is problematic."

03:11:46 25 Do you see that?

03:11:47 1 A. I do.

03:11:47 2 Q. Okay. I'll try to short-circuit some of this  
03:11:55 3 so we can save some time. She asks you of your view of  
03:11:58 4 Google's hiring. And then you responded to her, "My  
03:12:01 5 view is we would be better off if neither of us did it.  
03:12:04 6 If you all are, I sure as hell will try likewise."

03:12:08 7 Do you see that?

03:12:09 8 A. Uh-huh.

03:12:11 9 Q. Here you're offering to her a mutual commitment  
03:12:15 10 that both companies would try to reduce the hiring from  
03:12:17 11 the other; is that right?

03:12:22 12 A. I'm not offer -- I don't see that I'm offering  
03:12:24 13 any mutual commitment or establishing any agreement, I'm  
03:12:28 14 just trying to get a dialogue moving in a direction  
03:12:32 15 where she will reduce the scope of her hiring at Google.

03:12:41 16 Q. But you are offering -- and I understand that  
03:12:43 17 you are not entering into an agreement with this email.  
03:12:46 18 But it seems to me that you're outlining the terms of a  
03:12:51 19 truce with Facebook. Is that a fair assessment?

03:12:58 20 MR. RUBIN: Objection. Form.

03:13:03 21 THE WITNESS: I think I'm saying that I -- my  
03:13:06 22 view is that it would be better off if neither of us did  
03:13:11 23 it.

03:13:12 24 MR. HARVEY: Q. And by "it," you mean  
03:13:15 25 hiring?

03:13:16 1 MR. RUBIN: Objection. Form.

03:13:22 2 THE WITNESS: It would seem to me that hiring  
03:13:24 3 in large -- hiring large numbers of employees from each  
03:13:26 4 other, which seems to be the thing that I objected to at  
03:13:30 5 the outset.

03:13:35 6 MR. HARVEY: Q. Okay. If you could go to  
03:14:01 7 the bottom of page 1 to Ms. Sandberg's response she  
03:14:07 8 says, "That is not what I meant at all. What I  
03:14:10 9 meant is that Google grew by hiring from other firms  
03:14:13 10 in our industry even when they minded and people  
03:14:16 11 like Meg called Eric as we believed in a free labor  
03:14:20 12 market."

03:14:23 13 Is it correct that Google grew by hiring from  
03:14:25 14 other firms in the industry?

03:14:31 15 A. In addition to hiring people straight out of  
03:14:34 16 school, yes.

03:14:39 17 Q. And then I'm just going to jump up to her email  
03:14:43 18 to you on August 10th, 2008 at the very top where she  
03:14:50 19 says, "I think what really happens is that companies who  
03:14:53 20 have relationships agree in limited ways not solicit  
03:14:57 21 from each other. To my knowledge, Google has never  
03:15:01 22 agreed not to hire from any company."

03:15:02 23 And then she says, "Google did agree not to  
03:15:05 24 solicit from Intel, Apple, and maybe a few others due to  
03:15:09 25 board relationships, but never not to hire."

03:15:15 1 Is this a true statement of fact, as far as you  
03:15:18 2 know, that Google agreed with Intel, Apple, and maybe a  
03:15:23 3 few others not to solicit due to board relationships?

03:15:27 4 MR. RUBIN: Objection. Form.

03:15:27 5 THE WITNESS: I don't know the causality of  
03:15:30 6 agreements.

03:15:36 7 MR. HARVEY: Q. Okay. Putting causality  
03:15:38 8 aside, do you agree that Google, in fact, made these  
03:15:42 9 agreements not to solicit with Intel, Apple and  
03:15:43 10 maybe a few others.

03:15:45 11 MR. RUBIN: Objection. Form.

03:15:47 12 THE WITNESS: I believe we had a do-not-call  
03:15:49 13 list and a policy as articulated by Mr. Geshuri in the  
03:15:54 14 note that we looked at earlier.

03:15:57 15 MR. HARVEY: Q. As far as you know, those  
03:15:59 16 weren't pursuant to agreements?

03:16:01 17 MR. RUBIN: Objection. Form.

03:16:02 18 THE WITNESS: I'm not aware of any agreements.

03:16:05 19 MR. HARVEY: Q. So you don't know one way  
03:16:06 20 or the other?

03:16:09 21 MR. RUBIN: Objection. Form.

03:16:09 22 THE WITNESS: I'm not aware of any agreements.

03:16:12 23 MR. HARVEY: Q. Okay. Would you say that  
03:16:29 24 your attempt to negotiate with Sheryl Sandberg was  
03:16:34 25 unsuccessful?

03:16:43 1 MR. RUBIN: Objection. Form.

03:16:48 2 THE WITNESS: I didn't get -- I don't feel that  
03:16:49 3 I had a satisfactory response from Sheryl in achieving  
03:16:55 4 my objective.

03:16:57 5 MR. HARVEY: Q. And your objective was to  
03:16:59 6 try to convince her to substantially decrease the  
03:17:04 7 hiring Facebook was doing at Google, correct?

03:17:07 8 A. My objective was to reduce the overall number  
03:17:10 9 of employees that she was hiring from Google.

03:17:17 10 Q. And then shortly following your attempt, which  
03:17:19 11 I believe -- let me just look back at it -- was August  
03:17:30 12 9th, a few days later, Omid Kordestani gave it a shot;  
03:17:34 13 is that correct?

03:17:36 14 MR. RUBIN: Objection. Form.

03:17:38 15 THE WITNESS: I don't know what "gave it a  
03:17:40 16 shot" means, or when Omid spoke to Sheryl, but I'm sure  
03:17:46 17 that from time to time Omid had calls with her as well.

03:17:53 18 MR. HARVEY: Q. Why don't we make it a bit  
03:17:55 19 more concrete. If you could please look at  
03:17:57 20 Exhibit 619.

03:19:10 21 A. Okay.

03:19:14 22 Q. If you go to the last email Mr. Kordestani  
03:19:18 23 wrote, did you receive this on August 13th, 2008?

03:19:24 24 A. Yes.

03:19:24 25 Q. And among other things, Mr. Kordestani

03:19:26 1 describes a meeting with Sheryl Sandberg in which he  
03:19:32 2 complained about Facebook's rate of recruiting. Do you  
03:19:35 3 see that?

03:19:35 4 A. Yeah. It may have been a phone conversation.  
03:19:37 5 Doesn't say there was a meeting.

03:19:39 6 Q. I'll just point you to the subject of the  
03:19:42 7 email.

03:19:42 8 A. All right. There was a meeting.

03:19:45 9 Q. And as far as you understand it, Mr. Kordestani  
03:19:48 10 was unsuccessful in convincing Sheryl Sandberg to reduce  
03:19:54 11 the rate of hiring from Google?

03:19:59 12 A. From reading that email, that would appear to  
03:20:01 13 be the case.

03:20:04 14 Q. And then if you turn to the first page, it's an  
03:20:07 15 email you wrote in which you describe your discussion  
03:20:14 16 with Sheryl; is that right?

03:20:17 17 A. Yes. It appears to be my summary of the  
03:20:20 18 previous document.

03:20:22 19 Q. Uh-huh. If you could look to the text that  
03:20:28 20 starts after the second big redacted box.

03:20:33 21 A. Okay.

03:20:33 22 Q. That begins, "I did have a brief side dialogue"  
03:20:36 23 and then ends with a parenthetical?

03:20:39 24 A. Yes.

03:20:39 25 Q. In the parenthetical you wrote that she, Sheryl

03:20:42 1 Sandberg, also saw Shona later that day at a dinner. Do  
03:20:47 2 you see that?

03:20:48 3 A. Yes.

03:20:49 4 Q. Do you know whether Shona also had a  
03:20:55 5 conversation with Sheryl Sandberg on this topic?

03:21:01 6 A. Seems odd that I would put that in a  
03:21:03 7 parenthetical if I hadn't -- if I were not aware of some  
03:21:08 8 discussion, but I don't recall.

03:21:12 9 Q. Okay. And at this time or shortly thereafter,  
03:21:27 10 did Mr. Campbell support these efforts to seek a truce  
03:21:32 11 with Facebook?

03:21:37 12 MR. RUBIN: Objection. Form.

03:21:37 13 THE WITNESS: I don't know.

03:21:49 14 MR. HARVEY: Q. If you could please look  
03:21:50 15 at Exhibit 668.

03:22:05 16 A. Okay.

03:22:06 17 Q. And I'll note that this document -- just give  
03:22:13 18 me one moment -- was written a few days after the prior  
03:22:19 19 one.

03:22:24 20 If you go to the second email, did you write  
03:22:26 21 that email to Bill Campbell, Rachel Whetstone and Omid  
03:22:30 22 Kordestani?

03:22:31 23 A. Yes.

03:22:33 24 Q. And this is in response to Bill Campbell's  
03:22:36 25 email in which he says, "Jonathan, who should contact

03:22:40 1 Sheryl (or Mark) and get a cease fire. We have to get a  
03:22:44 2 truce." Correct?

03:22:45 3 A. Correct.

03:22:46 4 Q. Okay. And your response is, "Anybody BUT me!!!  
03:22:50 5 That's a good job for brother Omid!"

03:22:52 6 A. Yes.

03:22:55 7 Q. And why did you suggest that brother Omid  
03:22:58 8 should do it?

03:22:59 9 A. Because clearly I was not enjoying the  
03:23:05 10 interactions with Sheryl on this subject, and I was  
03:23:10 11 hoping that somebody else on the management team would  
03:23:13 12 take the next steps.

03:23:16 13 Q. And then Bill Campbell responds, in all caps,  
03:23:18 14 "YOU!"

03:23:21 15 Did you take any further steps after this to  
03:23:26 16 seek a truce with Facebook?

03:23:30 17 MR. RUBIN: Objection. Form.

03:23:32 18 THE WITNESS: I don't know what transpired  
03:23:34 19 after this. But if a threat existed where an action  
03:23:38 20 needed to be taken and Bill Campbell indicated that I  
03:23:40 21 was the next person to take the action, unless there is  
03:23:44 22 some thread indicating to the contrary, I'm sure my next  
03:23:51 23 step would be to follow up and do as Mr. Campbell  
03:23:54 24 suggested.

03:23:56 25 MR. HARVEY: Q. Sitting here today, were

03:23:57 1 you ever successful in seeking a truce with

03:24:03 2 Facebook?

03:24:06 3 MR. RUBIN: Objection. Form.

03:24:11 4 THE WITNESS: I don't believe I was ever

03:24:11 5 successful in getting Sheryl to modify the behavior, if

03:24:15 6 we define modifying the behavior as -- as changing the

03:24:22 7 practices in which they were engaged in previously

03:24:24 8 related to hiring Google employees.

03:24:33 9 MR. HARVEY: Q. Okay. This may be a good

03:24:40 10 time for a short break.

03:24:41 11 MR. RUBIN: Okay.

03:24:42 12 THE VIDEOGRAPHER: We are now off the record at

03:24:43 13 3:24.

03:24:48 14 (Recess taken.)

03:26:18 15 THE VIDEOGRAPHER: We are now on the record at

03:26:20 16 3:26. This is the end of video No. 2.

03:26:23 17 We are now off the record at 3:26.

03:27:41 18 (Recess taken.)

03:33:40 19 THE VIDEOGRAPHER: We are now on the record at

03:33:41 20 3:33. This is the beginning of video No. 3.

03:33:50 21 MR. HARVEY: Q. Did you ever discuss

03:33:52 22 potential agreements regarding restricting hiring

03:33:57 23 with anyone at Apple from 2004 through 2010?

03:34:05 24 A. Not that I recall.

03:34:10 25 Q. Did the topic of Google restricting recruiting

03:34:15 1 from Apple ever come up during any conversation you had  
03:34:19 2 with anyone at Apple?

03:34:25 3 A. Not that I recall.

03:34:30 4 Q. Did the topic of Google restricting recruiting  
03:34:34 5 from Intel ever come up during any conversation between  
03:34:37 6 you and anyone at Intel?

03:34:41 7 A. Not that I recall.

03:34:51 8 Q. And aside from the communications we saw today,  
03:34:57 9 did you ever have any communications with anyone at  
03:35:00 10 Intuit regarding Google restricting its recruiting of  
03:35:04 11 Intuit people?

03:35:11 12 A. It's quite plausible, but I don't recall. I  
03:35:14 13 don't recall any specific conversations.

03:35:16 14 Q. And it's plausible because those conversations  
03:35:20 15 may have happened with Bill Campbell?

03:35:22 16 A. They may have or they may have happened  
03:35:23 17 directly with Intuit employees who got in touch with me  
03:35:26 18 directly.

03:35:30 19 Q. Do you have anything in mind there, or do you  
03:35:33 20 remember anything more about those possible  
03:35:35 21 conversations?

03:35:35 22 A. No. Just that I had more -- more conversations  
03:35:39 23 with Intel employees because I -- there were some  
03:35:42 24 snares, we were talking about some marketing  
03:35:46 25 relationships with them for small and medium sized

1 I, Gina V. Carbone, Certified Shorthand  
2 Reporter licensed in the State of California, License  
3 No. 8249, hereby certify that the deponent was by me  
4 first duly sworn and the foregoing testimony was  
5 reported by me and was thereafter transcribed with  
6 computer-aided transcription; that the foregoing is a  
7 full, complete, and true record of said proceedings.

8 I further certify that I am not of counsel or  
9 attorney for either of any of the parties in the  
10 foregoing proceeding and caption named or in any way  
11 interested in the outcome of the cause in said caption.

12 The dismantling, unsealing, or unbinding of  
13 the original transcript will render the reporter's  
14 certificates null and void.

15 In witness whereof, I have hereunto set my  
16 hand this day: March 25, 2013.

17 \_\_\_\_\_ Reading and Signing was requested.

18 \_\_\_\_\_ Reading and Signing was waived.

19 \_\_\_X\_\_\_ Reading and signing was not requested.

20

21

22

23

\_\_\_\_\_  
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24

CSR 8249, CRR, CCRR

25